

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

V.

Case No. 1:18-CV-68

UNITED STATES OF AMERICA, *et al.*,

Defendants,

and

KARLA PEREZ, *et al.*,

Defendant-Intervenors,

and

STATE OF NEW JERSEY,

Defendant-Intervenor.

**DEFENDANT-INTERVENORS' SUPPLEMENTAL APPENDIX IN SUPPORT OF
THEIR RESPONSE IN OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL POST-
DISCOVERY BRIEF IN SUPPORT OF THEIR MOTION FOR PRELIMINARY
INJUNCTION**

EXH. NO.	DOCUMENT
151	Michael Knowles Deposition Excerpts
306	Stephen H. Legomsky Deposition Excerpts

Dated: August 4, 2018

Respectfully Submitted

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND**

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 4th day of August, 2018, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Nina Perales

Nina Perales

Def-Int. Ex. 151

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1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 BROWNSVILLE DIVISION
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IN THE MATTER OF:

STATE OF TEXAS, ET AL.,

Plaintiff,

v.

UNITED STATES OF AMERICA,
ET AL.,

Defendants,

and

KARLA PEREZ, et al.,

Defendant-
Intervenors,

and

STATE OF NEW JERSEY,

Defendant-
Intervenor.

Civil Action No.
1:18-CV-00068

Thursday,
August 2, 2018

Washington, D.C.

DEPOSITION OF:

MICHAEL KNOWLES

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1 called for examination by Counsel for the
2 Defendant-Intervenors, pursuant to Notice of
3 Subpoena, in the law offices of Mexican American
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21 ALEJANDRA AVILA*

22 RAI SHAY LIN

23

24 *Present telephonically

25

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1 P-R-O-C-E-E-D-I-N-G-S

2 11:05 a.m.

3 MS. PERALES: We're on the record.

4 COURT REPORT: Mr. Knowles, can you
5 please raise your hand?

6 MR. KNOWLES: Mm-hmm.

7 COURT REPORTER: Do you solemnly swear
8 or affirm that the testimony you're about to give
9 is the truth, the whole truth and nothing but the
10 truth?

11 MR. KNOWLES: I do so affirm.

12 COURT REPORTER: Thank you so much.

13 MS. PERALES: Good morning, Mr.
14 Knowles.

15 MR. KNOWLES: Good morning.

16 MS. PERALES: My name is Nina Perales
17 and I am an attorney for the Perez Defendant
18 Intervenors in this case.

19 Before we get started, I'd like to
20 have everybody else here introduce themselves
21 because we'll probably have several people
22 questioning you today.

23 So, to my right, if you wanted to
24 introduce yourself.

25 MR. HOLLANDER: Yes, I'm Jeremy

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1 separate from the field office directorate.

2 Q Okay. Do you have -- are you a member
3 of a union?

4 A I am.

5 Q What is the name of the union that you
6 are a member of?

7 A The American Federation of Government
8 Employees. And within that larger organization,
9 there is the National Citizenship and Immigration
10 Services Council of which I'm the president.

11 And, it's also known as Council 119.
12 Within that council there are 22 local unions
13 representing USCIS employees. And, I'm the
14 president of Local 1924 which is the local union
15 in the National capitol area representing USCIS
16 employees.

17 Q Would it be okay for me to refer to
18 Council 119 as NCISC?

19 A Yes.

20 Q And, would it also be okay for me to
21 refer to it as the USCIS Union?

22 A That would be okay. It's less
23 cumbersome.

24 Q Yes, and so I might refer to it --
25 would it also be okay if from time to time,

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1 instead of saying USCIS, that I might just say
2 CIS?

3 A Mm-hmm, yes.

4 Q Okay. How many people are in the
5 bargaining unit of the NCISC?

6 A It's approximately 12,500 in what we
7 call the nonprofessional bargaining unit. And,
8 there's approximately 100 in what we call the
9 professional bargaining unit.

10 Professional would be attorneys,
11 accountants, statisticians, social scientists
12 that whose job requires a particular specialized
13 degree.

14 But Council 119 represents only the
15 nonprofessional unit which is about 12,500.

16 Q And, does that 12,500 include
17 employees who are known as Immigration Service
18 Officers?

19 A Yes.

20 Q And, will it be okay if I refer to
21 Immigration Service Officers as ISOs?

22 A Yes.

23 Q All right. Now, you mentioned that
24 you are also the president of your Local 1924.
25 Is that right?

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1 A Yes.

2 Q So, you hold two presidencies at the
3 same time?

4 A That's right.

5 Q And, how many members in the
6 bargaining unit of your Local?

7 A In Local 1924 represents approximately
8 2,000, the bargaining unit from the
9 nonprofessionals. We also represent the 100
10 bargaining unit employees in the professional
11 unit.

12 And, they are generally located in the
13 National capitol area, although we have some who
14 are posted abroad.

15 Q All right.

16 A That would be the CIS Headquarters,
17 the Asylum Office, the Washington District and
18 Field Office, the Potomac Service Center, the
19 Administrative Appeals Unit, the Investor Program
20 Office and our international officers that have
21 deployed abroad.

22 Q With a bargaining unit of
23 approximately 2,000 people, how large is your
24 Local compared to some of the other constituent
25 parts of the CIS union?

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1 A Right. So, remember, I said there are
2 22 Local unions around worldwide that represent
3 CIS employees.

4 Local 1924 is probably the largest in
5 terms of bargaining unit size as well as
6 membership.

7 Of the 2,000 bargaining unit, about
8 800 members.

9 The second largest would be our Local
10 that's based out in Nebraska and the Upper-Mid-
11 West that includes the Nebraska Service Center,
12 the National Benefit Center, the National Records
13 Center and various field offices there.

14 They are roughly about the same size,
15 but slightly smaller.

16 Q Okay. When did you become president
17 of Local 1924?

18 A In 2000, the year 2000.

19 Q And, have you held the position of
20 president continuously since 2000?

21 A Yes, I've been re-elected many times.

22 Q And, can you briefly summarize your
23 responsibilities as president of Local 1924?

24 A So, I provide general oversight to the
25 affairs of the Local. I'm the Chief Executive of

1 our Executive Board.

2 I'm, you know, ultimately responsible
3 for the legal and financial affairs of the Local.
4 And, I represent the Local in other union
5 settings with AFGE National, our AFG District,
6 and of course, our CIS Council, National CIS
7 Council.

8 Q And, can --

9 A And, we, you know, we bargain and
10 negotiate contracts, agreements. We handle
11 grievances, arbitrations, dispute resolutions and
12 generally represent the bargaining unit in
13 matters affecting their working conditions and
14 dealing with the Agency.

15 Q And, when you say the Agency, do you
16 mean USCIS?

17 A Yes, yes.

18 Q Can you briefly summarize your duties
19 as the president of the USCIS union?

20 A Yes, as president of the Council, I'm
21 the Chair of our Executive Board. And, I provide
22 general oversight to the affairs of the Council.

23 It is a Council of 22 Locals. It's
24 not really a separate organization, it's really
25 more of a steering committee. And, we represent

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1 the 22 Locals in matters that affect them
2 collectively.

3 So, for example, I was the chief
4 negotiator of the USCIS -- chief negotiator for
5 the union of the USCIS Labor Contract, also known
6 as the collective bargaining agreement.

7 I would negotiate national agreements
8 with the Agency that affect the nationwide
9 workforce or matters that affected more than one
10 Local.

11 Sometimes we might engage in
12 litigation on behalf of the Council,
13 arbitrations, EEO complaints, appeals to the
14 Merit Systems Protection Board.

15 And, we provide assistance and
16 guidance to our Locals. The Locals are
17 autonomous within our Council. So, I don't
18 direct, you know, I don't direct the other Local
19 presidents, but I represent them.

20 And, when they need assistance, we
21 provide training, guidance. We might help
22 intervene on behalf of those Locals with the
23 higher Agency leadership.

24 Q When did you become the USCIS
25 president?

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1 A This is -- I've served two different
2 terms. The first one was from 2007 to 2009.

3 And, my current term from 2015 to the
4 present. It's a three-year term.

5 Q Does that mean you're up for election?

6 A Yes, our elections are in August.

7 Q So, this --

8 A The 11th of August is our election.

9 Q Okay. Are you in a contested
10 election?

11 A Yes.

12 Q Okay. Now, when you were elected
13 USCIS president in 2015, was that a contested
14 election?

15 A It was.

16 Q And, what was the name of your
17 opponent?

18 A Kenneth Palinkas.

19 Q Okay.

20 A He was the incumbent president.

21 Q Okay.

22 A At the time.

23 Q In your role as USCIS president -- in
24 your role as USCIS union president, do you have
25 interactions with union members in offices other

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1 than your own?

2 A Yes, frequently.

3 Q Can you describe those interactions?

4 A Yes, I mean, normally, well, for the
5 Local as the Local president, I'm, you know, I'm
6 constantly moving among all of the units, meeting
7 with employees, attending town hall meetings,
8 meeting with management.

9 I like to talk with as many employees
10 as possible so I get a good sense of what their
11 concerns and interests are. Individuals call me
12 asking for advice and assistance.

13 With respect to the other Locals, the
14 usual point of contact would be with the Local
15 president or their designee.

16 Sometimes, I might get a call from a
17 random employee and office around the country and
18 I would then direct them, you know, for proper
19 assistance to their Local president.

20 We have periodic conference calls,
21 conferences. I visit other offices and other
22 Local unions jurisdictions. So, there's quite a
23 bit of interaction.

24 Q Have you ever bene to a USCIS Service
25 Center?

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1 A I have. In fact, our Local 1924
2 represents the Potomac Service Center which is in
3 Crystal City, Arlington, Virginia. I go there
4 frequently.

5 And, I've visited all of the other
6 Service Centers, Vermont, Nebraska, Texas,
7 California in the course of my work with the
8 union.

9 Q And, when you visit Service Centers,
10 do you have an opportunity to speak to the staff
11 at those Service Centers?

12 A Yes. Yes, sometimes we've had
13 negotiations, meetings. Sometimes, it's a
14 courtesy visit.

15 When we signed the current collective
16 bargaining agreement with the Agency, we actually
17 did that in conjunction with the visit of the
18 former director, Leon Rodriguez, to the Nebraska
19 Service Center.

20 And, I traveled there with our AFG
21 National president. We sought and made a big
22 ceremony signing the CBA with Director Rodriguez.

23 And then, we actually toured the
24 entire Service Center and met, you know, went
25 desk to desk, the Director and I, and the

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1 National Union president went and basically met
2 every employee in the building.

3 Q All right. Now, are you familiar in
4 a general sense with the types of applications
5 that are adjudicated at Service Centers?

6 A I'm not familiar as a worker with
7 those form types because my job is just
8 adjudicating asylum claims. But, I have general
9 familiarity with the kinds of benefits that
10 various offices adjudicate.

11 Q And, do you know where DACA requests
12 are adjudicated?

13 A Generally, in Nebraska, the Nebraska
14 Service Center. And, at some time, they have
15 been also done at the California Service Center.

16 But, if you're familiar with the
17 Service Center operations, they tend to shift
18 work around the country. I think at one time
19 earlier in the Agency's evolution, they would,
20 you know, they had different portfolios assigned
21 to different Centers.

22 But, it's really a mobile work,
23 depending on volume, backlogs, staffing and so
24 on.

25 Q Do adjudications at USCIS Service

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1 Centers typically include an interview?

2 A No, they do not.

3 Q Are you aware of DACA --

4 A In fact, I'm sorry, I'm not aware of
5 any interviews being conducted in Service
6 Centers. They're really not set up, you know,
7 there's no interview offices, no -- there's no
8 what we call public interface between the Service
9 Centers and the public.

10 Although, sometimes, a Service Center
11 may send a case to a field office with a request
12 that the field officer interview the applicant to
13 obtain further information or evidence.

14 Q Are you aware of any specific
15 instances where a DACA request was referred to a
16 field office for interview?

17 A Yes, I'm aware of, you know,
18 anecdotally. I don't -- because I don't do the
19 work. But, I have spoken with several of my
20 colleagues in recent months about that question.

21 I've spoken specifically with our
22 union reps in the Washington, D.C. Field Office
23 and the Atlanta, Georgia Field Office. And, they
24 told me about doing interviews on behalf of the
25 Service Center in several cases where the Service

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1 Center needed more information. They called in
2 the DACA applicant.

3 I think in these cases, they were
4 suspected of gang activity or gang association.
5 And so, they brought in the applicants and
6 pursued the lines of questioning requested by the
7 Service Center. Sent the cases back to the
8 Service Center with the findings.

9 Q Have you had an opportunity to speak
10 with members of the USCIS union about how they
11 adjudicate DACA applications?

12 A Yes, I've spoken with the former
13 president of the Local that represents employees
14 at the California Service Center. I say former
15 because they just had an election. That
16 individual is now the vice president, same Local.
17 I've spoken with the president of the
18 Nebraska Service Center and the vice president of
19 the Nebraska Service Center.

20 I can't recall whether the California
21 president has personally adjudicated DACA cases.
22 I believe he may have.

23 But, the two individuals in Nebraska
24 both -- they are ISOs who had done DACA.

25 Q And, you spoke to those two?

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1 A Yes, yes.

2 Q Okay. And, did you have occasion to
3 speak with these union members who include DACA
4 adjudications about whether they rubberstamp
5 applications?

6 A Yes.

7 Q And, can you convey or share with us
8 what you learned from those conversations?

9 A Well, I asked them, you know, what
10 would you say to the criticism that this
11 adjudication is a rubberstamp operation?

12 They said no, far from it. We have
13 very specific training and guidance. Every case
14 is treated on its own merits. We do thorough
15 examination of the evidence.

16 We do the necessary background checks.
17 We flag any cases that are of concern or
18 supervisory review.

19 The individuals kind of bristled at
20 the thought that they would -- it would be said
21 that their colleagues rubber-stamped anything.

22 Q Did you have occasion to talk with any
23 DACA adjudicator about how much consideration
24 they gave and how much discretion they exercised
25 with respect to DACA applications compared to

1 other applications that they may adjudicate?

2 A Yes, I mean, I asked them, it's really
3 in the same conversation about so-called rubber-
4 stamping. I said, it's been said by critics of
5 the program that you guys don't have any
6 discretion.

7 And, they were quite surprised and
8 said, well, yes, we -- by definition, any
9 adjudication requires some discretion. That's
10 why we have immigration officers who are trained
11 in immigration law to apply the law on a case by
12 case basis and use discretion in their decisions.

13 They're not under orders to
14 automatically approve or deny a case. They're
15 looking at case by case.

16 Does the applicant -- I would say this
17 of any adjudication, does the applicant meet the
18 stated criteria or not? And, even if they do
19 meet the stated criteria, are there any
20 discretionary reasons to deny them or any
21 mandatory reasons such as criminal record or
22 possible terrorist, national security threat, et
23 cetera, et cetera.

24 So, they -- one individual said, of
25 all the form types that he had adjudicated at the

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1 Nebraska Service Center, DACA, he felt, was the
2 most -- the one that required the most
3 discretion.

4 And, he said, particularly, because
5 the requirements were quite stringent to show the
6 physical presence, to show the continuous
7 physical presence and also to make sure that
8 there was no criminal record.

9 And, also, that there was no fraud
10 involved.

11 Q Did you have occasion to speak with
12 DACA adjudicators or other union members about
13 the use of discretion and the criteria related to
14 education? The DACA criteria that the individual
15 either be in school or have completed high
16 school?

17 A I didn't ask specifically, you know,
18 do you discretion with that? I asked just in
19 general, do you use discretion to making your
20 decision.

21 Now, they did, in the course of
22 describing their work, they were describing their
23 work because I asked them to describe their work,
24 because I don't know their work other than what I
25 read in the newspapers about the program.

1 So, what are you looking for in terms
2 of qualification? They're looking at, of course,
3 continuous presence, time of entry, the age,
4 education, military service and criminal records.

5 The only thing I remember them telling
6 me about specifically about the education was
7 that they were particularly attentive to looking
8 at potential fraud.

9 And, they referred to with some pride
10 of ownership that their unit had successfully
11 worked with our fraud detection and national
12 security folks and ICE to uncover and pursue
13 prosecution because ICE pursued the prosecution
14 of so-called diploma mills.

15 And so, they were particularly
16 vigilant about possible document fraud.

17 Q And, in order for a DACA adjudicator
18 to figure out whether an applicant was presenting
19 information that might be related to a diploma
20 mill, did they describe that they were using
21 discretion in that consideration?

22 A I didn't ask those kind of questions.
23 I don't have any personal knowledge of how they
24 pursued their adjudications.

25 Q Okay.

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1 A They just, you know, reiterated that
2 they do it with due diligence and coordination,
3 they don't do it in a vacuum. They work, as I
4 said, closely with the Fraud Detection and
5 National Security folks.

6 When there are indicators of problems,
7 they're instructed to flag them, bring them to
8 their supervisors and pursue whatever avenues are
9 necessary.

10 Q Is it fair to say that DACA requests
11 are adjudicated by Immigration Service Officers?

12 A Yes.

13 Q And, are you familiar with the
14 training generally that is offered Immigration
15 Services Officers?

16 A Yes, well, there is the BASIC
17 Immigration Service Officer Training, also known
18 as BASIC, all caps.

19 It is a -- it was historically, I
20 think a four-week course. It's now been extended
21 this year. I can't recall to five or six weeks,
22 which every Immigration Services Officer must
23 take. And, so a requirement of their employment,
24 must take it and pass.

25 And, that's conducted at our Service

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1 Academy in Charleston, South Carolina. But,
2 sometimes, like in the case of our Service Center
3 here in Arlington, Virginia, that was a fairly
4 new Service Center. They had to hire a lot of
5 employees at one time.

6 They actually brought the training
7 staff up and trained them on the site.

8 Similarly, asylum officers and refugee
9 officers also go to BASIC training. Anyone who
10 adjudicates an application has to go the BASIC
11 training course.

12 And then, there's additional training,
13 depending on the job. So, for asylum, we have a
14 whole asylum training academy. Same thing for
15 the refugee officers.

16 In the Field Offices, they may get
17 additional specialized training in interviewing.
18 And, in the Service Centers, and all offices,
19 there are on site trainers who provide continuous
20 training that's specific to the form types, the
21 use of the databases.

22 There's lots of ongoing required
23 training about privacy, computer security,
24 integrity, EEO, safety and health. So, there's
25 constant training going on.

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1 Q From time to time, do you, as the
2 union president, advocate to management regarding
3 workload or work conditions of your union
4 members?

5 A Well, that's one of the main things
6 that we do. There are things which we sometimes
7 negotiate in a formal agreement. And, there are
8 other areas of advocacy that are what we would
9 call in the nonnegotiable category.

10 Because, according to the Labor Law,
11 there are things that are exclusive management
12 rights such as assignment of work, the methods
13 and means of production, the technology that's
14 used. You can't negotiate over, you know, what
15 system they're going to use, but we negotiate
16 over how it's applied, the effect there is on the
17 workforce.

18 We recently negotiated over the
19 implementation of new performance measures. That
20 was partly due to standardization from DHS and
21 OPM, but also we were looking for more standard
22 performance measures within the Agency.

23 Now, during those negotiations, of
24 course, it was made very clear by the Agency that
25 things like metrics that are used to evaluate

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1 productivity was in the area of management's
2 exclusive rights. And, our views were welcomed,
3 but it was a nonnegotiable issue.

4 Now, for our constituents, I would say
5 across the Agency, whether it's Field Offices,
6 Service Centers, Asylum Offices, are very, very
7 concerned about their caseload.

8 And, I would say that's probably one
9 of the universal themes among my members is they
10 feel that they've got too much work to do in too
11 little time. And, they are working under
12 extremely stringent quality control standards.

13 And so, there's a lot of pressure.
14 There's a lot stress. There's a lot of people
15 saying they're working through their lunch or
16 they sometimes come in early or stay late, which
17 they're not supposed to be according to the Fair
18 Labor Standards Act, you're not supposed to be
19 working for free.

20 But, a lot of people work, as we say,
21 off the clock because they feel they have to meet
22 the production standards.

23 So, we, even though those -- it's not
24 a negotiable area, I'm constantly talking to the
25 senior leadership says, you know, it's your right

1 to assign the work, but make sure it's a
2 reasonable caseload. Make sure that you're on
3 top of your staffing. Make sure that people have
4 the right training, the right equipment and that
5 the supervision that they get should be of a
6 coaching and a mentoring kind of leadership, not
7 just counting widgets.

8 So, it's an area of constant, well, I
9 would say creative tension between quality and
10 quantity.

11 But, having said that, we are held to
12 very high quality standards. And, my own office,
13 we have a 100 percent review, supervisory review.
14 If I don't get it right, they send the case back
15 and have me do it over again.

16 Q Has any DACA adjudicator that you've
17 spoken to or any union member in a Service Center
18 told you that DACA applications are rubber-
19 stamped because of high workload?

20 A Not specifically. I mean, they did
21 not describe it to me as, hey, you know, DACA is
22 the worst of all as far as assembly line.

23 That the pressure to produce, I would
24 say, is equally felt among form types in Service
25 Centers, in Field Offices, in Asylum Offices.

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1 We, you know, we're adjudicating
2 benefits that involve people on an industrial
3 scale. And, there's always those that had a
4 tension.

5 So, I did, however, have our union
6 reps from Nebraska say that they were often told
7 to make sure that they got the decisions right
8 and that they should take the time that they
9 needed to do the case correctly.

10 That doesn't mean that the pressure's
11 off to produce, but they were specifically told
12 not to sacrifice quality in order to make their
13 production.

14 Q And, were any -- did anybody
15 communicate to you that that was the case
16 specifically with DACA that they ought to take
17 the time --

18 A Yes.

19 Q -- to do it right?

20 A Yes, yes.

21 Q And, can you share that with us?

22 A Well, I thought I just did, like the
23 individual said. I, you know, said are you
24 pressured to keep the line moving? He said,
25 well, yes, we're always pressured to keep the

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1 line moving, the production line.

2 But, we're also told to take the time
3 that's needed to, you know, look at all aliases,
4 because many applicants have, you know, at
5 various times, different encounters with the
6 Agency or other immigration agencies have used
7 different names that, of course, we know with
8 various cultures and linguistic groups, you've
9 got different name orders, family name, given
10 name, matrilineal, patrilineal.

11 And, we have to -- well, all of us are
12 trained regardless of form type that you have to
13 meticulously run in our background checks all
14 possible aliases.

15 And, my performance is, we use the
16 term dinged. We get dinged on our performance
17 quality if we fail to check all aliases. It
18 comes back to the employee.

19 And so, the individual said, they're
20 told, you know, make the decision, but make sure
21 you get it right and that you do check all the
22 databases, you do check and follow up on all
23 possible hits and leads of criminal activity.

24 MS. PERALES: I'm going to hand you
25 what has been marked Deposition Exhibit Number 2.

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1 And, I will represent to you that this
2 is a signed declaration from Mr. Kenneth Palinkas
3 from April 6, 2018.

4 And, you can find that information on
5 the very last page with the date and signature.

6 First, can you tell me who is the
7 president of the USCIS union on April 6th, 2018?

8 (Whereupon, the above-
9 referred to document was
10 marked as Deposition Exhibit
11 No. 2 for identification.)

12 MR. KNOWLES: That would be me. If
13 you're referring to the National CIS Council 119,
14 that would be me.

15 Mr. Palinkas is the former president
16 of the Council, as I said earlier. And, he's
17 currently the president of Local 0235 in the New
18 York area, New York City area.

19 MS. PERALES: I'd like you to turn
20 with me, if you would, to the first page of the
21 declaration. And, I'd like you to look at
22 towards the bottom of the page, there is a
23 paragraph that starts with the word "however."

24 MR. KNOWLES: Mm-hmm.

25 BY MS. PERALES:

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1 Q And the second sentence, and tell me
2 if I read this correctly, quote, management has
3 continually transformed USCIS from a service that
4 serves to protect our national security and the
5 rule of law into one that, instead, serves to
6 protect undocumented immigrants and their
7 lawyers, unquote.

8 Did I read that correctly?

9 A Yes, that's how I read it.

10 Q Okay. Do you agree with that
11 statement?

12 A I don't.

13 Q Okay.

14 A I do not, just to make sure you note
15 that.

16 Q Did Mr. Palinkas consult with you
17 before making this statement in this declaration?

18 A No.

19 Q Looking at the next sentence in that
20 same paragraph, quote, this is what facilitated
21 the changes in our titles from Adjudications
22 Officers to Immigration Services Officers.
23 Aliens seeking benefits have been referred to as
24 customers further eroding the standards as
25 contained in the INA, unquote.

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1 Did I read that correctly?

2 A Mm-hmm.

3 Q Do you agree with that statement?

4 A No.

5 Q Do you believe that the change in
6 title from Adjudication Officer to Immigration
7 Service Officer has undermined the mission of the
8 Agency?

9 A No.

10 Q Do you believe that referring to non-
11 citizens who seek immigration benefits as
12 customers erodes the standards contained or
13 erodes the standards of your Agency?

14 A No.

15 Q Did Mr. Palinkas consult with you
16 before making that statement in his declaration?

17 A No.

18 Q Looking to the top of the next page,
19 if you would, with me. I'm going to read to you
20 the first sentence of that paragraph. You tell
21 me if I've read it correctly.

22 Quote, the so-called Deferred Action
23 for Childhood Arrivals, parentheses, DACA, close
24 parentheses, program has further compromised and
25 eroded the goals that USCIS Officers pursue every

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1 day to protect our borders by ensuring that
2 immigration benefits are granted for those who
3 meet the criteria, unquote.

4 Did I read that correctly?

5 A Mm-hmm.

6 Q Do -- is it your opinion that DACA has
7 further compromised and eroded the goals that
8 USCIS Officers pursue every day?

9 A No, I don't agree with that.

10 Q Did Mr. Palinkas confer with you
11 before making this statement in his declaration?

12 A No. If could just make a comment,
13 you've asked me several times if he's conferred
14 with me, I'm not sure whom he has conferred with.
15 I'm, you know, maybe his colleagues, but
16 certainly not with me as a fellow Local
17 president.

18 Q And, would it be fair to say that he
19 also did not confer with you as the president of
20 the USCIS union?

21 A No, he did not, either -- when I --
22 since I've been president, he has not conferred
23 with me on things like that. And, when he was
24 president of the National Council, I don't recall
25 him conferring with me or other Local presidents

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1 about such matters.

2 Q Further down in the paragraph, there's
3 a sentence that begins with the word "and." I'll
4 read that to you.

5 Quote, and, USCIS management has
6 ensured that these applications are not properly
7 screened as has it over assigned the workload for
8 the completion of these applications to be
9 favorably rubber-stamped as long as they meet
10 minimal requirements, unquote.

11 Did I read that correctly?

12 A Mm-hmm.

13 Q Based on your conversations with
14 members of the union and with DACA adjudicators
15 about their workload, do you agree with that
16 sentence?

17 A I do not agree with that sentence.

18 Q Okay. The first sentence in the next
19 paragraph starting with the word "since." I'll
20 read it to you and you let me know if that's what
21 it says.

22 Quote, since June 2012, USCIS has
23 continually bypassed Congress and existing
24 immigration law as contained in the Immigration
25 and Nationality Act with the enactment of the

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1 DACA program, unquote.

2 Did I read that correctly?

3 A Yes.

4 Q Do you agree with that statement?

5 A I do not.

6 Q Okay. With respect to the final
7 sentence in the paragraph, quote, in the interim,
8 taking a backseat to this avalanche of benefits -
9 -

10 A I'm sorry, I'm not sure where we are.

11 Q We're still in the paragraph that
12 begins with the word "since."

13 A Right.

14 Q It's the very last sentence.

15 A Uh-huh, oh, I see, in the interim,
16 okay.

17 Q Yes, quote, in the interim, taking a
18 backseat to this avalanche of benefits bestowed
19 on illegal aliens are the jobs, wages, benefits
20 and security that rightfully belong to Americans
21 and their families as well as those individuals
22 who applied for immigration benefits in
23 accordance with existing law and procedure,
24 unquote.

25 Do you see that there?

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1 A I do, although I'd like to read it
2 again because I'm not quite sure I follow. So,
3 it's not your reading, but I'm trying to
4 understand the sentence.

5 Q It might help to read the preceding
6 sentence as well.

7 A Okay.

8 Q Do you agree with the -- that sentence
9 that I read to you?

10 A I do not.

11 Q Is it the case that, from time to
12 time, an non-citizen seeks an immigration benefit
13 when that person holds no immigration status in
14 the United States?

15 A Could you repeat that?

16 Q Yes, I'll try to say it a little more
17 simply.

18 A Yes.

19 Q This sentence refers to illegal
20 aliens, do you see that?

21 A Yes.

22 Q Is it the case that, sometimes, an
23 individual who is not lawfully present in the
24 United States would seek an immigration benefit?
25 For example, like asylum?

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1 A Yes.

2 Q Is it the case that, sometimes, people
3 who are undocumented, let's say, for lack of a
4 better work, in the United States would seek
5 another kind of immigration benefit?

6 A Yes, but I'm -- I guess I'm not
7 understanding the -- I'm not understanding the
8 question.

9 Q Well, it's --

10 A So, people apply for asylum, but, by
11 definition, one could conceivably be here
12 unlawfully and still qualify for asylum. And,
13 the granting of asylum is a discretionary
14 decision.

15 Though there are many programs for
16 which they're not eligible and they're
17 ineligibility would be material to whether
18 they're lawfully here or not. It really depends
19 on the benefit they have sought.

20 So, it's also known that an asylum
21 seeker, if their application is pending beyond a
22 certain amount of time, can qualify to get
23 temporary work permit.

24 Through no fault of their own, their
25 case was not heard within the specified time

1 frame.

2 But, I'm a little confused by the
3 sentence that you asked me to read because I'm
4 not sure what the writer or the speaker is saying
5 about an avalanche of benefits bestowed on
6 illegal immigrants.

7 I mean, people may apply for various
8 programs, and they're only granted a benefit if
9 they qualify for the benefit. I'm not aware of
10 people having benefits bestowed on them for which
11 they don't qualify.

12 Q Okay. And, is it true that sometimes
13 people who are outside the United States apply
14 for a visa from USCIS before entering?

15 A Yes.

16 Q And, is it also true that sometimes
17 people are present in the United States without
18 immigration status and they might also apply for
19 --

20 A Yes.

21 Q -- a benefit?

22 Okay, going down to the bottom of the
23 page, if you would count with me three paragraphs
24 up. So, there is a paragraph that starts "that
25 is why a moratorium." Do you see that there?

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1 A Mm-hmm.

2 Q I'm going to read you that sentence.
3 Quote, that is why a moratorium on the existing
4 DACA program must be put into effect until a
5 system is established that will ensure proper
6 procedure and vetting for all.

7 Next sentence, we should stop
8 processing any and all pending DACA applications
9 immediately, unquote.

10 Do you see that?

11 A I do.

12 Q Do you agree with that sentence?

13 A I don't and I, if I may, I'd like to
14 explain why I don't agree with it. It's because,
15 to the best of my knowledge, which is admittedly
16 not firsthand because I don't process DACA, but
17 from what I've read in public news sources, the
18 Agency's own websites and talking to my members
19 who do this work, I have no reason to doubt that
20 we have proper procedures and vetting for all.

21 I'm confident that like all other CIS
22 programs, we have proper procedures and vetting.

23 I'm also confident, based on my
24 experience, the USCIS, like other immigration
25 agencies, are constantly reviewing and correcting

1 course when necessary, revising, updating
2 technology when a threat is perceived, addressing
3 it properly when fraud is detected, taking
4 appropriate action.

5 When there are unscrupulous advocates,
6 there are various measures that are taken.

7 So, it's not that procedures are
8 static, they're always dynamic. And, I think one
9 of the things that I know our workers are proud
10 of is that they participate, our workers, our
11 members, participate in constantly improving the
12 organization by bringing problems to the
13 attention of management.

14 And, we have a management that
15 actually seeks, you know, valid, current
16 information from the folks doing the work.

17 So, it's not that we're not in need of
18 improvement, we're always in need of improvement,
19 but to call for the shutting down of a program
20 for lack of proper procedure and vetting, I don't
21 believe that -- I'm not aware of any evidence
22 that we don't have proper procedure and vetting.

23 Whether one agrees with the program or
24 not as a policy is another matter. And, I'm not
25 really a partisan on the public policy. I'm

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1 speaking to the work that I know my members do
2 and have told me they do.

3 Q Do you think that adjudication like
4 DACA could be outsourced to individuals outside
5 the Agency? What is your view of that?

6 A I don't -- I'm not sure what you mean
7 by outsourced.

8 Q Hire private contractors to simply
9 look at DACA applications?

10 A Well, the union would vigorously
11 oppose, as it does almost all contracting out,
12 but certainly of what we call inherently
13 governmental functions.

14 I can give you a historic example.
15 Several years ago, the Agency, this was maybe
16 over ten years ago, the Agency attempted to do
17 what they call an A76 study of where contractors
18 were invited to compete for a contracting out of
19 what was then called Customer Contact
20 Representatives or the folks that work the front
21 window in a Field Office answering questions and
22 resolving cases.

23 And, the union successfully, with the
24 support of Congress, stopped and actually had
25 Congress defund that study because we argued

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1 these are inherently governmental functions, even
2 the contact rep at the front window requires very
3 specialized training, high accountability and
4 they do, sometimes, some level of adjudications.

5 Those individuals have now been
6 retitled to be Immigration Services Officers
7 Level I. Those folks exercise a high degree of,
8 you know, required proficiency and
9 accountability.

10 I would never support the contracting
11 out of adjudication of any benefit. That's
12 definitely, you know, according to the
13 Immigration and Naturalization Nationality Act,
14 sorry, those functions are to be performed by
15 Immigration Officers.

16 MS. PERALES: I'd like to take a short
17 break before passing the witness. It's been
18 about an hour. So, if we could go off the
19 record.

20 (Whereupon, the above-entitled matter
21 went off the record at 12:07 p.m. and resumed at
22 12:28 p.m.)

23 MS. PERALES: Okay, we're back on the
24 record.

25 I pass the witness. And, I think I'm

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1 sometime.

2 A Okay.

3 Q So, let's just try not to talk over
4 each other and try give me verbal answers.

5 A All right.

6 Q So, after you received Mr. Palinkas's
7 declaration, what did you do next?

8 A Well, I thought about it and I called
9 folks that I knew. For example, I called my
10 colleagues in the Washington District Office.

11 These are all the people that I spoke
12 to are union representatives. And, my -- I don't
13 have the capacity to like send out a broadcast
14 message, a survey, you know, assemble all the
15 people that work there.

16 And, I would not normally do that
17 unless the employees were making it an issue they
18 wanted me to take on.

19 So, just to -- for me to assess and be
20 able to answer the question, what do you think
21 about this statement, I wanted to find out from
22 folks who have more familiarity with the subject
23 what they do.

24 So, I called my colleagues, as I said,
25 one in Washington District. The individual is

1 one of my Local vice presidents and what we call
2 an ISO Level III.

3 So, their Senior Immigration Services
4 Officer said, hey, what do you think about this
5 statement? And, do you, as an Immigration
6 Services Officer, in a Field Office, ever
7 interview DACA applicants?

8 Because, one of the statements that
9 Mr. Palinkas made was, no DACA applicant is every
10 interviewed. I didn't know the answer to that so
11 I asked my colleague.

12 She says, well, not normally, but
13 sometimes we do. And, I said like, for instance
14 what? And, she said, well, I personally received
15 two different applications files from the Service
16 Center asking me to call in the individuals and
17 interview them about potential gang activity.

18 And, I said do you get involved in
19 adjudicating the case? No, I was -- my mission
20 was to interview them about these things and send
21 my findings back to the Service Center. I have
22 no idea, she said, what they did there.

23 Called my colleague in Atlanta --

24 Q Stop really quick, let's -- before we
25 go to Atlanta, let's finish up, it's D.C.,

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1 correct?

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q Not Washington State?

6 A No, no, it's call the Washington Field
7 Office which is actually located in Fairfax,
8 Virginia.

9 Q Okay. How many DACA interviews did
10 that person tell you they had personally
11 conducted?

12 A Two.

13 Q Okay. And, did she -- you said it was
14 a she, I believe?

15 A Mm-hmm.

16 Q Did she indicate to you the substance
17 of those DACA interviews?

18 A Only what I just said, that they -- it
19 had to do with -- to try to determine whether
20 they had any gang connections.

21 Q Okay.

22 A But, I didn't ask anything further
23 than that.

24 Q Before you had that conversation, were
25 you aware of a single instance where a DACA

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1 application had been actually withdrawn? Before
2 that phone conversation, were you aware of a
3 single interview of a DACA -- a potential DACA
4 recipient occurring anywhere in the United
5 States?

6 A No, I, as I said to you a moment ago,
7 because I'm not familiar with the program, I was
8 reading Mr. Palinkas's statement where he said no
9 DACA applicants are ever interviewed. Okay?

10 So, I know that Service Centers don't
11 do interviews. But, I called a colleague that I
12 know a confidant, they're a reliable source, do
13 you know if DACA applicants are ever interviewed
14 in a Field Office?

15 Because that's the only place that we
16 do interviews is in a Field Office or, in my
17 case, in an Asylum Officer. Or in the case of
18 refugees officers abroad or --

19 She says, well, occasionally, yes.

20 Q So, besides the two interviews she
21 personally did, did she tell you that other
22 interviews had occurred?

23 A I just asked what was her own
24 experience and that's what she said. And, I
25 didn't like exhaustively, you know, interrogate

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1 her to uncover, you know, other data or whatever.

2 Q So, as you sit here today, you're
3 aware of only two instances at the Washington
4 District Office where DACA applicants were
5 interviewed?

6 A Right. Whether there were more, I
7 have no idea.

8 Q Okay.

9 A Because I didn't go and like do a data
10 call or, you know, call the district director. I
11 didn't really feel that was my role. I really
12 was trying to assess from my members and my
13 fellow union representatives, what was their own
14 knowledge of the matter?

15 Q Could you have done a data call?

16 A I suppose I could have as a union rep.
17 But, my -- I'm not involved in the case. I was
18 just called and asked from information and
19 comment.

20 If we were involved in any kind of a
21 case as a moving party or whatever, we might do a
22 data call. And, in our parlance, it's called a
23 request for information.

24 But, normally, the union's request,
25 you know, our right to request and the Agency's

1 response of what responsibility to provide me
2 with information would be usually with respect to
3 a labor issue.

4 So, for example, if I was defending
5 somebody in an adverse action, I might ask for
6 data information pertaining to their personnel
7 file.

8 Or, if it affected, say, the overtime
9 practices of the Agency and we were litigating
10 over, you know, improper payment of overtime, I
11 might be asking for records pertaining to that.

12 But, wouldn't really have a reason to
13 ask the Agency for like statistics about DACA.
14 Because, I'm not involved in the case.

15 If my members, however, had brought to
16 me an issue about DACA that affected their
17 working conditions, for example, if they felt
18 like they were, you know, being overwhelmed with
19 the caseload or there was massive fraud or
20 rubber-stamping or whatever.

21 And, I wanted to bring that issue
22 forward to the Agency, yes, I might be asking for
23 information.

24 But, none of my members have ever
25 brought that to me as a concern.

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1 Local.

2 Q All right, so, we have that call you
3 made.

4 Then, let's talk about the next call
5 you made. Who'd you call?

6 A I called -- well, no, mind you, I
7 don't know if sequentially, I don't have the
8 dates and the sequence of who I called when.

9 Q All right, let's -- I won't hold you
10 to that --

11 A But, I did call my colleague at the
12 Atlanta District --

13 Q Mm-hmm.

14 A -- who is the current Local president
15 of that Local union.

16 Q Okay.

17 A And, she is also an ISO Level III
18 Senior Adjudicator.

19 Q And, what did you ask her?

20 A Same thing. Here's this statement,
21 what do you think? Is it, you know, are you
22 aware of any occasions when DACA applicants are
23 every interviewed?

24 She goes, yes, I sometimes get cases.
25 I can't remember the specifics. I think it might

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1 have been similar kind of thing, possible gang
2 activity.

3 But, the reason that she got these
4 files was the Service Center needed, in order to
5 complete their adjudication, a face to face
6 interview to verify tests or look at documents.

7 I didn't ask extensively, you know,
8 who, what, where, how and when occurred during
9 the interview.

10 But, she said, it's -- both
11 individuals said, it's highly unusual for people
12 to be interviewed. But, when necessary, they
13 are.

14 Q Did she tell you how many interviews
15 she had personally done?

16 A I believe she said two.

17 Q Are you aware besides those two of a
18 single DACA applicant being interviewed at the
19 Atlanta Field Office?

20 A I have no, I mean, again, my only
21 source of knowledge about it was these phone
22 calls.

23 Q So, that's a no?

24 A I have -- yes, no.

25 Q Okay. And, what other phone calls did

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1 A I have no way to know that.

2 Q Let's go to Nebraska now. What were
3 the job descriptions of the individuals in
4 Nebraska that you called?

5 A They were both ISO IIs.

6 Q What was their role with the union?

7 A The one is the current president and
8 the other is the current vice president at the
9 Nebraska Service Center.

10 Q What did you ask these individuals?

11 A I sent them the statement. I asked
12 did they have any comments about it? They were
13 both somewhat surprised that most of it appeared
14 to be opinion rather than, you know, certainly
15 Mr. Palinkas, as an ISO II in a Field Office,
16 does not have personal knowledge of this.

17 They found a number of statements that
18 they thought were not factual.

19 And, I basically said, so, tell me
20 what you guys do. How do you do it? I asked
21 them about discretion. I asked them about
22 rubber-stamping.

23 I think I -- I mean, I could repeat
24 myself --

25 Q Okay.

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1 A -- but, I said it earlier in the
2 record.

3 Q Sure.

4 A But, they both said, no, we don't
5 rubberstamp, we're extensively trained. We are
6 to flag any problems, either a hit from the
7 database, criminal record, misdemeanor, whatever.

8 They both talked about the involvement
9 of their unit in uncovering some so-called
10 diploma mills with collaboration of FDMS fraud
11 detection national security Unit of CIS and ICE,
12 that resulted in prosecutions.

13 Q Sure.

14 A They both bristled at the idea that
15 they rubber-stamped. They both said that they
16 were held to very high quality standards.

17 And, that, you know, that the question
18 of, you know, what does one need to do to be
19 approved? Well, one needs to meet the criteria.
20 If they don't meet the criteria, they don't get
21 approved.

22 If they meet the criteria, they might
23 get approved provided they don't have bars to
24 seeking the benefit like a criminal record.

25 Q Did those individuals tell you they

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1 had personally interviewed DACA applicants?

2 A No, because they don't interview DACA
3 applicants in a Service Center.

4 Q All right. Did they tell you that
5 they had sent any DACA applicants to be
6 interviewed at Field Offices?

7 A They -- I do not recall that they
8 personally said that they had sent cases, but I
9 do believe they affirmed that, on occasion, cases
10 are sent out to the Field Offices for further
11 inquiry.

12 Q So, in their call to you, they did not
13 mention that they had personally sent any DACA
14 applicant to be interviewed at a Field Office,
15 right?

16 A No, and I didn't really ask them. My
17 job wasn't deposing them, it was like --

18 Q Sure.

19 A -- pretty quick conversations.

20 Q And so, your only information about
21 what happens at the Field Offices with DACA
22 applicants from the Nebraska Service Center comes
23 from your conversation with these individuals,
24 correct?

25 A Could you repeat that?

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1 Q Let me stop you there. We'll get back
2 to the question.

3 A All right.

4 Q So, the question is, your knowledge
5 about what happens with DACA applicants at the
6 Nebraska Service Center --

7 A Right.

8 Q -- is based solely upon your
9 conversation --

10 A Largely in part, my conversations,
11 because I do have other knowledge based on
12 reading the generally available information
13 about DACA.

14 I can't say that I only have knowledge
15 based on my conversations.

16 Q And, the generally available
17 information you've read, none of that said that
18 Service Centers send DACA applicants to be
19 interviewed at Field Service Centers?

20 A I don't recall reading that.

21 Q Did you call anyone at the Texas
22 Service Center location?

23 A I did, and I was told they don't do
24 DACA.

25 Q They don't do DACA at all?

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1 A Right. I was told by the Local
2 president there.

3 Q What's that person's name?

4 A Kevin Tinker.

5 Q Tinker?

6 A Tinker, T-I-N --

7 Q Tinker?

8 A -- K-E-R.

9 Q Had that Service Center ever done
10 DACA?

11 A I'm not sure I asked that question.

12 Q So, do you know if they have ever --

13 A I do not know that.

14 Q Okay.

15 A But, as I said earlier, although
16 historically, some Centers will do particular
17 caseloads increasingly work is shifted. But, I
18 do not believe it is correct in Mr. Palinkas's
19 statement that DACA is done at all Service
20 Centers.

21 To the best of my limited query, they
22 were done in California and Nebraska.

23 Q So, they're not done in Washington,
24 D.C.?

25 A No.

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1 Q They're not done in Atlanta?

2 A No. No, there's no Service Center in
3 Atlanta. There's a Service Center in Arlington,
4 Virginia, one in Vermont, one in Nebraska, one in
5 Texas, one in California. And, to the best of my
6 knowledge, they are done primarily in Nebraska,
7 but some at some point have been done in
8 California.

9 Q Are you aware of any Field Office in
10 Texas that has interviewed a DACA recipient?

11 A No, I didn't ask.

12 Q How many Filed Offices are you aware
13 of throughout the entire country that have
14 interviewed DACA recipients?

15 A Well, I'm only aware of two because
16 those were the calls that I made. I have not
17 called each and every Field Office to ask.

18 Q So, it's fair to say, as you sit here
19 today, you're aware of four instances where DACA
20 recipients were interviewed at a Field Center?

21 A Mm-hmm.

22 Q That's a yes?

23 A That is yes, that is yes.

24 Q Sorry.

25 A Sorry, I keep giving you a nonverbal

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1 nod. That is yes.

2 Q Very good.

3 Sorry, and I do the exact same thing,
4 I apologize.

5 A And, I have to reiterate, I did not do
6 a comprehensive data call. I mean, this
7 information should be readily available to the
8 parties from the Agency.

9 Q Let's talk about your personal
10 background. You're an Asylum Officer?

11 A I am an Asylum Officer.

12 Q Have you ever personally processed a
13 DACA application?

14 A Have what?

15 Q Have you ever personally processed a
16 DACA application?

17 A No, I have no reason to.

18 Q Have you ever adjudicated a DACA
19 application?

20 A No, I would have no reason to.

21 Q Okay. Do you know what the criteria
22 are to qualify for DACA?

23 A Vaguely. I mean, based on what I've
24 read in the public information.

25 Q You mentioned earlier something about

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1 and my colleagues told me about the kinds of
2 cases that would be denied, but I didn't ask
3 about specific cases.

4 Q Sure. So you know that applications
5 have been denied based on statistics that are
6 posted on USCIS's website?

7 A Right. And by the testimony of my
8 colleagues that they have denied cases or
9 colleagues have denied cases and for what reasons
10 they have denied cases.

11 Q So your colleagues have told you they
12 denied cases?

13 A Yes.

14 Q Okay. Did they tell you why they
15 denied those cases?

16 A Yes, because they didn't meet the
17 criteria or because there was some, you know,
18 discretionary reason.

19 Q What discretionary reason?

20 A That maybe the evidence was in
21 question or there was fraud or if there was
22 evidence of criminal activity.

23 Q Okay. Besides the evidence being in
24 question, evidence of fraud or lack of, I think
25 you said a lack of --

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1 A It didn't meet the criteria, right.

2 Q Are you aware of any discretionary
3 denial of the DACA application?

4 A I wouldn't have that kind of knowledge
5 not having worked there, but, you know, the use
6 of the word "discretion" I think sometimes is
7 misused.

8 So it implies -- Based in my line of
9 business, which is highly discretionary, it's not
10 like a flip of a coin or I don't feel like it,
11 right, you know, it is my authority to make or
12 not make a decision but it has to be based on
13 evidence based on proper application of the law,
14 such as how I feel about it.

15 Oh, yes, they meet the criteria but
16 I'm just not going to approve it. That would be
17 an abuse of discretion. So we often in my trade
18 as an asylum officer we are trained in the proper
19 use of discretion and in the, you know, the
20 favorable exercise of discretion when the
21 evidence merits that.

22 Q Did you send Mr. Palinkas's
23 declaration to anyone else besides the
24 individuals you just named?

25 A No.

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1 Q Did you call Mr. Palinkas to ask him
2 about his declaration?

3 A No.

4 Q How many locals make up the National
5 Union?

6 A Twenty-two.

7 Q How many of those locals did you call
8 the presidents of to ask about the adjudication
9 of DACA?

10 A So it would have been my own local,
11 the Washington District, the Atlanta District,
12 the Texas Service Center. Mr. Tinker, by the
13 way, is also in National Council.

14 The local President in Texas is also
15 the Executive Vice President of the National
16 Council. He has seen and commented to me on Mr.
17 Palinkas's declaration. I called California
18 Service Center and the Nebraska Service Center.

19 Q Did you call the local where Mr.
20 Palinkas is a member?

21 A No.

22 Q All right. So that was kind of like
23 the bucket of things you did after talking to New
24 Jersey and getting Mr. Palinkas's deposition.

25 Is there anything else during that

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1 A I have no -- Since I am not a party to
2 the case I don't, you know, I was not involved in
3 the discussions with the court.

4 Q Would you have testified in this
5 deposition if you didn't believe the court had
6 ordered you to?

7 A You know, I am not a lawyer and I am
8 not familiar with legal process. I wish to be
9 cooperative in this proceeding and I think it is
10 in the public interest and in the interest of my
11 union that the matters be made clear and I am
12 here to testify as the Union President.

13 Q Did you --

14 A Because a colleague testified as a
15 Union President it became clear to me that there
16 is more to it than, there is more to the reality
17 of what the Union has to say than one man's
18 opinion.

19 I am sure that my testimony could be
20 called another man's opinion. But I have tried
21 to the extent possible to keep my opinion out of
22 it and speak to the facts that I know or don't
23 know.

24 Q Did you discuss your testimony today
25 with the Board that oversees the National Union?

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1 A No. It's his statement.

2 Q Are you speaking today as Union
3 President on behalf of the entire Union?

4 A I am.

5 Q Okay. And you did not receive any
6 authorization from the Union as a whole to offer
7 that opinion, correct?

8 A I don't -- We don't have that
9 requirement.

10 Q Did you ask in any way the opinions of
11 your members about the DACA process besides what
12 you have already described?

13 A I did not but I would like to place
14 that in context, right. I do not believe that I
15 am offering an opinion about DACA, the program,
16 its appropriateness, its legality, whatever.

17 I have been asked to comment on Mr.
18 Palinkas's statement. Now one of my comments is
19 that to the best of my understanding a lot of his
20 statement is opinion.

21 It's something that I would, you know,
22 expect as op-ed piece. He is certainly entitled
23 to his opinion, but there is a lot of opinion
24 about the program.

25 I don't have an opinion about the

1 program that I am putting forward here, and if I
2 were to do so I would be canvassing my members,
3 right.

4 We don't typically put out statements
5 on public policy except to the extent that the
6 public policy in question is affecting the
7 working conditions of our members.

8 And you may have seen statements I
9 have made about the asylum and refugee program
10 and I made them with respect to the views that
11 those employees expected me to put forward and as
12 they pertain to their working conditions.

13 But I have not been contacted by my
14 members to advocate on their behalf about the
15 DACA program.

16 Q Okay. So --

17 A So if my organization was going to
18 take a position on DACA I would be consulting
19 with my members and saying, you know, what is our
20 position on DACA, for, against, should,
21 shouldn't, et cetera.

22 Q Sure. Have you ever testified before
23 Congress before?

24 A I have not.

25 Q You have not. Have you ever testified

1 might be -- they might do 8 or 10 or 12,
2 depending on the complexity.

3 Adjustment of status, I'm not sure.

4 Q Okay. Why is it important to do such
5 in depth interviews for asylum purposes?

6 A Because the scope of what you're
7 discussing is so universal. I mean, you're
8 looking at identity, looking at manner of entry.

9 You're looking at their documents.
10 You're looking at their testimony. And, some of
11 the stories, I mean, in some cases, you're
12 looking at gathering someone's life story.

13 Where were they born? What tribe?
14 What about their parents? And, what's the
15 political party?

16 And, when a lot of the testimony --
17 when a lot of the decision based on the
18 testimony, you have to pursue many, many avenues.

19 And, you know, with other types of
20 immigration interviews, you're looking, again, at
21 a very limited scope of inquiry.

22 Q You're not testifying on behalf of
23 USCIS today, are you?

24 A No, I'm not.

25 Q And, you don't speak for the federal

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1 Walker's turn.

2 MR. WALKER: I have no other
3 questions.

4 MS. PERALES: Oh, you pass? It's my
5 turn then.

6 MR. WALKER: Yes.

7 MS. PERALES: I only have one
8 question.

9 CROSS EXAMINATION

10 BY MS. PERALES:

11 Q Mr. Knowles, you spoke a few moments
12 ago with Mr. Biggs about approval rates.

13 A Mm-hmm.

14 Q And, my question is whether you would
15 expect different form applications to have the
16 same approval rate across the Agency?

17 A No, I would not.

18 Q Why not?

19 A Well, I think I said earlier,
20 comparing the asylum adjudication to DACA is
21 really apples and oranges, elephants and zebras,
22 whatever.

23 My reference in my testimony to what
24 I do is really to talk about what I do. That's
25 what I know and what I do is very specific to

1 asylum.

2 But, there are some things that are
3 consistent throughout the Agency like security
4 checks and, you know, performance measures and
5 accountability and all of those things.

6 But, I would expect different approval
7 rates because, and I think I alluded to this in
8 some of my earlier statements, each form type is
9 very specific. The scope of it is very
10 different.

11 So, you know, when you're adjudicating
12 a work permit, it's a work permit whether you're
13 adjudicating an asylum application, it's that.
14 And there are -- the scope is very different.

15 For some cases, it's very limited.
16 And the threshold of -- that one has to meet is
17 different.

18 So, you know, in DACA, my limited
19 understanding is, you know, I'm sure there's all
20 kinds of subcategories, but it's, you know, age,
21 time of entry, continuous presence and school
22 records and military records, et cetera, and
23 criminal history.

24 It's a very limited scope because the
25 program itself is very limited. It's not even a

1 status, it's a deferred action. Their status is
2 still they're unlawfully here.

3 Prosecutorial action is deferred, as
4 I understand it from the public information. I'm
5 not trying to redefine what DACA is.

6 And, they get a work permit for
7 dependency of that status. But, it's not even a
8 status as we commonly understand it. They're
9 still in unlawful status.

10 So, many applicants that I interview
11 are not in status, right, when they come to me.
12 Some are in status.

13 If I deny an applicant asylum who is
14 not in status, they're actually referred to the
15 immigration court.

16 If they are in status, they're just
17 denied asylum and they retain the status that
18 they have for as long as that status is valid.

19 So, approval rates, I mean, it's the
20 approval rate should be reflective of, as I said
21 earlier, to Mr. Biggs, did they qualify or didn't
22 they? Right? And, if all the people qualify,
23 well, you would expect there to be a high
24 approval rate.

25 If they didn't qualify, you would

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1 expect it to be reflective of the caseload.

2 MS. PERALES: Thank you.

3 I pass the witness.

4 MR. BIGGS: I think I have one more or
5 maybe two --

6 MR. KNOWLES: Sure.

7 MR. BIGGS: -- depends on how we talk
8 to each other.

9 CROSS EXAMINATION

10 MR. BIGGS: Is it your understanding
11 that once someone's DACA application is approved
12 that they maintain an unlawful presence in the
13 United States?

14 MS. PERALES: Objection,
15 mischaracterizes the testimony. Objection, calls
16 for a legal conclusion.

17 MR. BIGGS: You can answer.

18 MR. KNOWLES: Yes, I don't have
19 personal knowledge of that. I am -- I would
20 probably say I'm speculating, I'm guessing based
21 on my knowledge as an asylum officer, when I
22 interview somebody, I ascertain, what is their
23 immigration status? Right?

24 So, they're either, you know, entry
25 without inspection. They're either a current,

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1 C E R T I F I C A T E

2 This is to certify that the foregoing transcript

3 Deposition of: Michael Knowles

4 In the matter of: State of Texas v USA

5 Before: US District Court

6 Date: 08-02-18

7 Place: Washington, DC

8 were duly recorded and accurately transcribed

9 under my direction; further, that said transcript

10 is a true and accurate record of the proceedings;

11 and that I am neither counsel for, related to,

12 nor employed by any of the parties to this action

13 in which this deposition was taken; and further

14 that I am not a relative nor an employee of any

15 of the parties nor counsel employed by the

16 parties, and I am not financially or otherwise

17 interested in the outcome of the action.

18

19

20 Jennifer Bernardi

21 Court Reporter

22

23

24

25

Def-Int. Ex. 306

STATE OF TEXAS, ET AL. vs UNITED STATES OF AMERICA, ET AL.
Stephen Legomsky on 08/01/2018

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 1:18-cv-00068
)	
UNITED STATES OF AMERICA, ET)	
AL.,)	
)	
Defendants,)	
)	
and)	
)	
KARLA PEREZ, ET AL.,)	
)	
STATE OF NEW JERSEY,)	
)	
Defendant-Intervenors.)	

THE DEPOSITION OF STEPHEN LEGOMSKY

Taken on behalf of Plaintiffs

August 1, 2018

HUSEBY GLOBAL LITIGATION
1230 WEST MOREHEAD STREET, SUITE 408
CHARLOTTE, NC 28208
(800) 333-2082

STATE OF TEXAS, ET AL. vs UNITED STATES OF AMERICA, ET AL.
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1 I N D E X O F E X A M I N A T I O N

2

3 WITNESS: STEPHEN LEGOMSKY

4 Examination By Mr. Disher8

5 Examination By Mr. Robins100

6 Examination By Ms. Perales106

7 Examination By Mr. Disher119

8

9

I N D E X O F E X H I B I T S

10

Exhibit 19

11

Houston Chronicle Article

12

Exhibit 211

13

The Source Article

14

Exhibit 313

15

Article

16

Exhibit 426

17

Law Review Article

18

Exhibit 534

19

Declaration

20

Exhibit 660

21

DACA Statistics

22

Exhibit 787

23

Neufeld Affidavit

24

Exhibit 889

25

Declaration of Stephen H. Legomsky

26

Exhibit 990

27

Congressional Testimony

28

Exhibit 1092

29

Congressional Testimony

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1 Exhibit 1197
2 Article

3

4

The original exhibits were retained by the court reporter
to be attached to COUNSELS' transcripts.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.,)
Plaintiffs,)
vs.) Case No. 1:18-cv-00068
UNITED STATES OF AMERICA, ET)
AL.,)
Defendants,)
and)
KARLA PEREZ, ET AL.,)
STATE OF NEW JERSEY,)
Defendant-Intervenors.

16 THE DEPOSITION OF STEPHEN LEGOMSKY, produced,
17 sworn, and examined on behalf of the Plaintiffs, August
18 1, 2018, between the hours of eight o'clock in the
19 forenoon and five o'clock in the afternoon on that day,
20 at the offices of Alaris Litigation Services, 711 N.
21 11th Street, St. Louis, Missouri 63101, before Rebecca
22 L. Tuggle, a Registered Professional Reporter,
23 Certified Court Reporter, and Certified Shorthand
24 Reporter within and for the State of Missouri.

STATE OF TEXAS, ET AL. vs UNITED STATES OF AMERICA, ET AL.
Stephen Legomsky on 08/01/2018

Page 5

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Huseby Global Litigation

STATE OF TEXAS, ET AL. vs UNITED STATES OF AMERICA, ET AL.
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1 MR. ROBINS: All right. So this is Jeffrey
2 Robins for the federal defendants from the Department
3 of Justice. And I just want to lay down the ground
4 rules that I would prefer we use today given that the
5 federal defendants do have concerns, as you may know,
6 Mr. Legomsky, and certainly as the parties know, about
7 testimony that you may give today that would call for
8 the disclosure of information privileged, either under
9 the attorney-client privilege or potentially
10 deliberative process privilege or any other privileges
11 that may apply. I would just ask that to the extent
12 that any answer or testimony that you're going to
13 provide today is based on or calls for the disclosure
14 of communications, including advice or guidance that
15 you gave to your clients or to the agencies, to either
16 USCIS or DHS or other sub-components in your role as
17 chief counsel of USCIS, or as counselor to the
18 Secretary of Department of Homeland Security, that in
19 the case that your testimony would call for the
20 disclosure of that -- those forms of communication,
21 the federal defendants assert that that would call for
22 the disclosure of confidential or privileged
23 information and would instruct that you not answer
24 those questions and not disclose that information.
25 Recognizing that there may be some questions where

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1 it's unclear of what capacity you're being called upon
2 to answer them, if you could please clarify if you
3 believe before you answer a question that the answer
4 would call for the disclosure of such information,
5 give federal defendants the opportunity to raise that
6 objection, for the parties to potentially discuss the
7 nature of that answer off the record and determine
8 whether federal defendants will, in fact, object to
9 such answer on the basis of privilege.

10 THE WITNESS: I understand.

11 MR. ROBINS: Thank you.

12 IT IS STIPULATED AND AGREED by and between
13 counsel for the Plaintiffs and counsel for the
14 Defendants that the deposition of STEPHEN LEGOMSKY may
15 be taken in shorthand by Rebecca L. Tuggle, a
16 Registered Professional Reporter, Certified Court
17 Reporter, and Certified Shorthand Reporter, and
18 afterwards transcribed into typewriting, and the
19 signature of the witness is reserved by agreement of
20 counsel and the witness.

21 PROCEEDINGS BEGAN AT 1:00 P.M.

22 * * * * *

23
24 STEPHEN LEGOMSKY,
25 of lawful age, being produced, sworn, and examined on

STATE OF TEXAS, ET AL. vs UNITED STATES OF AMERICA, ET AL.
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1 the part of the Plaintiffs, and after responding "Yes"
2 to the oath administered by the court reporter, deposes
3 and says:

4 EXAMINATION

5 QUESTIONS BY MR. DISHER:

6 Q Mr. Legomsky, good afternoon.

7 A Good afternoon.

8 Q Can you please introduce yourself to the
9 court?

10 A Sure. I apologize in advance, I'm losing a
11 little bit of my voice; so tell me if I need to pipe
12 up. My name is Stephen Legomsky. S-t-e-p-h-e-n
13 L-e-g-o-m, as in Mary, s-k-y.

14 Q Thank you, Mr. Legomsky. Mr. Legomsky, you
15 are a law professor so I'll spare you some of the
16 formalities about introducing the deposition process,
17 but two things to point out. If you ever don't
18 understand any of my questions, please let me know.
19 Is that fair?

20 A Yes. Thank you.

21 Q And then if you ever need to take a break
22 today, also just let me know and we'll take a break.
23 But if there is a question pending on the table, I'd
24 ask that you would answer that question before we take
25 a break. Is that fair?

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1 Q Okay. Go ahead.

2 A And finally, for a brief period in 2015, I
3 believe from July to October of 2015, I served as
4 Senior Counselor to the Secretary of Homeland
5 Security.

6 Q Okay. Going back to what we had talked
7 about earlier, you can pull it up if you need to, but
8 in Exhibit 4, you say -- again, you said that you were
9 a member of the Obama Administration in a -- Let me
10 start that over.

11 A I'm sorry. What page are we on?

12 Q Of course. Exhibit 4, page 339.

13 A Okay.

14 Q You said that you were a member of the Obama
15 Administration integrally involved in the rollout and
16 implementation of DACA; right?

17 A Yes.

18 Q And I don't want to ask you about any of the
19 substance of the communications that you may have had
20 in your role as chief counsel, okay? But I do want to
21 ask you, can you give me a general sense about what
22 your integral involvement was in the rollout and
23 implementation of DACA?

24 A Yes. One of the things that the agency,
25 USCIS, had to do after DACA was announced was refine

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1 some of the details. For example, which sorts of
2 crimes would disqualify someone, what sorts of
3 documentation should we require for proving that you
4 meet the education requirements and those sorts of
5 things.

6 MR. ROBINS: I just want to pause real fast
7 and just to be clear that I would object to the extent
8 that anything your -- your testimony now relates to
9 anything that is deliberative in nature that didn't
10 result in any final guidance or actions or relates to
11 any specifics of the communications you had with
12 regard to even both non-final and final guidance.

13 THE WITNESS: I appreciate that and I will
14 be careful. The two examples I just gave, however,
15 were both things that were, in fact, published and are
16 still in the public domain.

17 So my role as chief counsel was to supervise
18 those attorneys in my office who were working on these
19 various issues from the legal side, as well as to
20 participate in discussions with agency leadership and
21 operational folks as to how this might be implemented.

22 Q (By Mr. Disher) Okay.

23 MS. PERALES: Just a caution. With respect
24 to discussions or communications, you may want to keep
25 in mind the privilege issue.

1 testimony. I reviewed the memo that then USCIS
2 Director Leon Rodriguez wrote to Senator Grassley in
3 response to a request for information -- statistical
4 information about DACA and advance parole.

5 I also read the more extended subsequent
6 memo on that subject that Director Rodriguez also
7 wrote in response to congressional inquiries. I
8 reviewed the document that USCIS posted on its public
9 website on approval and denial rates for DACA
10 requesters.

11 There might have been other documents that
12 are not coming to mind at the moment.

13 Q Okay. What was your methodology to reach
14 the opinions that are disclosed in your declaration?

15 A It depends on the particular declarations.
16 Some are based solely on my general knowledge of
17 immigration law from both teaching and researching.
18 Some other conclusions were based on the information
19 that I gleaned from those public documents. Some were
20 simply based on what I felt to be internal logic.

21 Q Okay. What specialized skill or expertise
22 did you bring to bear in order to prepare this
23 declaration?

24 A Well, again, my several decades of
25 experience in the field of immigration law. My

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1 training and my legal education and my subsequent
2 training, my research skills, and hopefully my
3 analytical skills.

4 Q Okay. What fact issue do you think this
5 declaration will help Judge Hanen decide?

6 A Without making the statement sound
7 exclusive, one issue that comes immediately to mind is
8 the fact question of whether USCIS adjudicators were,
9 in fact, performing the discretionary case-by-case
10 evaluation of individual DACA requests that the
11 Secretary's memo explicitly instructed them to do
12 so -- to do and that the standard operating procedures
13 issued to the adjudicators requested them to do.

14 Q Any other fact issues you can think of? And
15 take your time to look through it if you want.

16 A I would have to go through statement by
17 statement. Do you have any specific statements in
18 mind that I should focus on?

19 Q Well, can you -- I just want to see if you
20 can point to any fact issues in here, other than, in
21 your opinion, whether individual adjudicators
22 exercised discretion.

23 A You'll have to give me a moment because
24 there are --

25 Q Take your time, please.

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1 A -- 40-something statements in this
2 declaration. And you said factual determinations;
3 right?

4 Q Yes.

5 A One factual assertion that runs through
6 several of the statements is that the Department of
7 Homeland Security is uniquely positioned by virtue of
8 both its expertise and its delegation of authority
9 from Congress to make the kinds of determinations on
10 which the decision to announce DACA and the way in
11 which they are implementing it. That's one.

12 Q What sources did you rely on for your
13 opinions related to that fact issue?

14 A Partly the express delegation from Congress
15 of the authority to the -- of the responsibility to
16 the Secretary of Homeland Security to establish
17 immigration enforcement policies and priorities.
18 Partly through my own knowledge of the professionalism
19 of the DHS employees. Partly from my own experience
20 in knowing that the DHS employees are involved in
21 these issues, bring, in most cases, many years of
22 expertise to the subject.

23 Q Okay.

24 A Would you like me to continue going through
25 it?

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1 Q Okay. Keep going.

2 A Yes, the other factual statements in
3 paragraph 12, I would say the same thing about, that
4 they come from published reports and that they are
5 examples of facts that I would hope might be helpful
6 to a court in assessing whether there was a rational
7 basis for DACA.

8 Q But in paragraph 12, the opinions you're
9 expressing, you have not done any studies or reports
10 yourself related to the issues detailed in paragraph
11 12?

12 A No. Except that with respect to the very
13 last sentence of that paragraph, although I have not
14 done a report, again, my exposure over the course of
15 two years to DHS officials dealing with these issues
16 enables me to see that these officials are uniquely
17 well-positioned to balance the various policy factors.

18 Q Okay.

19 A The statement in paragraph 13 could be
20 characterized as one of fact and so I think it's
21 relevant to your question. And as to that, I believe
22 the facts that USCIS and its predecessor agency abused
23 both the prosecutorial discussion generally and
24 deferred action, in particular, for many decades could
25 help a decision-maker determine its legality today

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1 regulations," unquote. I point out there that they
2 are not jumping the line.

3 Q And your opinion that they are not jumping
4 the line is, again, based on the relevant immigration
5 statutes and regulations?

6 A Yes. In paragraph 36, I make the point that
7 most, if not all, of the criteria for DACA are ones
8 that can easily be determined based solely on written
9 documents and the background checks that the
10 adjudicators perform. And that, therefore, personal
11 interviews are seldom necessary or even particularly
12 helpful. That could be relevant to Mr. Palinkas'
13 assertion that the mere absence of a personal
14 interview somehow renders the adjudication unreliable.

15 Looks like you're about to ask me something.

16 Q Yes. I'm thinking. Give me one second.
17 What is the foundation for that opinion?

18 A I lay out the specific found -- the
19 specifics of that foundation in paragraph 36 itself.
20 I identify the specific DACA criteria and explain why
21 each one is amenable to particular documentary
22 evidence. For example, the person has to be under a
23 certain age at the time of application and not over a
24 certain age. Birth certificates provide that
25 information.

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1 Q Okay.

2 A A person has to meet certain educational
3 requirements. And documents from the educational
4 institutions or from the Armed Services provide that
5 information.

6 Q Do you think that the judge himself could
7 look at those stated criteria and determine whether
8 the criteria could be determined by simple factual
9 determinations?

10 A I'm not sure what you mean by simple
11 factual. Do you mean non-interview?

12 Q Yes.

13 A Yes, could. If the judge is aware of these
14 facts.

15 Q Okay. And those facts are spelled out in
16 the DACA memo itself?

17 A The facts as to what the criteria are are
18 spelled out in the DACA memo. The required
19 documentation is spelled out in other documents,
20 including the standard operating procedures given to
21 the adjudicators.

22 Q Okay. As well as the frequently-asked
23 questions on USCIS's website?

24 A Correct.

25 Q Okay. But looking at those sources, the

1 judge can make a determination for himself that these
2 particular criteria could be determined solely on
3 documentary evidence and not interviews?

4 A Yes.

5 Q Okay.

6 A I think paragraph 37 provides information
7 that is available on the basis of public records, but
8 which without specific mention might not be obvious to
9 a judge. And, therefore, I think the observations
10 contained in paragraph 37 could be helpful to a judge
11 in understanding the implications of accepting
12 Mr. Palinkas' theory that the lack of an interview
13 renders the results unreliable.

14 Q So you pointed that information out to the
15 judge?

16 A Yes.

17 Q And what about your specialized training or
18 knowledge makes you uniquely qualified to point that
19 information out to the judge?

20 A Well, I'm very familiar with the work that
21 the USCIS service centers do and how that workload
22 is -- how the USCIS workload is divided between those
23 adjudicators and those who work in the field offices.

24 Q But if anybody went to this website that's
25 cited here, they could also make that determination;

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1 right?

2 A If they knew of the website, yes.

3 Q Okay.

4 A Also in paragraph 37, I point out that many
5 of the benefits that USCIS service center adjudicators
6 decide are ones that are either ones that -- I need to
7 rephrase.

8 Many of the things they adjudicate are
9 either prerequisites to or applications for a formal
10 legal status. That might not be obvious to a person
11 who is not familiar with immigration law as a
12 specialty.

13 Q But, again, all that information is
14 available on the USCIS website?

15 A Not all of it. Some of it a person would
16 have to know to go to the relevant parts of the
17 statute and make those determinations, prerequisites
18 to other benefits.

19 Q Okay. So it's either on the USCIS website
20 or referenced in the statute?

21 A Correct.

22 Q Got it.

23 MS. PERALES: Before you do your next
24 question, I know we're coming up on an hour. May we
25 ask the court reporter to tell us how long we've been

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1 on the record?

2 REPORTER: An hour and 10 minutes.

3 MS. PERALES: Hour and ten. All right.

4 Would it be all right before you ask your next
5 question?

6 Q (By Mr. Disher) Would you like a break?

7 A Sure.

8 MS. PERALES: Thank you.

9 (Whereupon, a brief break was taken.)

10 Q (By Mr. Disher) All right, Mr. Legomsky.

11 We're back on the record and we were going through
12 your declaration to identify the opinions on factual
13 issues that you have given, and I believe we were on
14 page 17. And so I just want to continue that and make
15 our way through the rest of it to see what facts you
16 offer opinions about.

17 A Well, in paragraph 38, I discuss the
18 instructions given in the standard operating
19 procedures for DACA adjudicators. And, in particular,
20 the instruction that they carefully examine all cases
21 of possible fraud based on the standard fraud
22 protocols. That's very important to anyone who might
23 be concerned that there is not enough attention given
24 to possible fraud.

25 Q And that opinion is based on your review of

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1 the standard operating procedures?

2 A In part. It's based also on my ability to
3 interpret the standard operating procedures and on my
4 knowledge from having been at USCIS of how carefully
5 the fraud adjudicators scrutinize these cases. I
6 happen to know that they take them very seriously and,
7 therefore, the factual information in paragraph 38 is
8 probably more important than might meet the eye for a
9 person who is not familiar with these processes.

10 Q And that is based on your personal
11 observation of their process to review these
12 applications?

13 A Yes.

14 Q How many --

15 A Based on -- I'm sorry. It's based on my
16 general observations of the fraud officers at USCIS.

17 Q And that --

18 A Not -- not just -- sorry -- not just
19 specifically DACA.

20 Q And that would have occurred during your
21 stint from 2011 to 2013?

22 A Yes.

23 Q Okay. You have not observed any DACA
24 adjudications since 2013?

25 A No.

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1 Q Have -- no, that is correct, you have not
2 observed -- Let me ask -- let me ask the question
3 again.

4 Since 2013, you have not observed any DACA
5 adjudications; correct?

6 A Correct.

7 Q Okay. How many DACA applications have you
8 personally adjudicated?

9 A None.

10 Q Okay. How many DAPA applications have
11 people who report directly to you adjudicated?

12 A None. The only people who reported to me
13 were other attorneys, not adjudicators.

14 Q All right. Keep going.

15 A Paragraph 39 comments on the -- interprets
16 and comments on the approval of denial -- wait,
17 approval/denial rates for DACA and what that approval
18 rate was. That's extremely important information for
19 the issue of whether case-by-case adjudication is
20 truly taking place.

21 Q And that paragraph is based on data released
22 by USCIS?

23 A In part. That -- those data require some
24 interpretation. For example, the figures for denials
25 are accompanied by a footnote that also -- that says

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1 by denial, we need to include denials, terminations,
2 and withdraws. I don't know that a person without
3 expertise in immigration law or familiarity with the
4 process would understand what terminations are. But
5 they are, in effect, a form of denial. Something I
6 know because of my expertise in immigration.

7 Q All right. And I was going to ask you about
8 that later, but since we're on that point anyway, I
9 can just give you a copy of this.

10 (Exhibit 6, DACA Statistics, were
11 marked for identification.)

12 Q (By Mr. Disher) We'll mark this as Exhibit
13 6. So this is the DACA statistics as of May 31, 2018.

14 A Okay.

15 Q And you've seen documents like this before?

16 A The most recent one I had seen was from
17 March 31st, but yes.

18 Q Okay. Now, if we look at the second page,
19 there's the column at the top for denied under case
20 review?

21 A Yes.

22 Q And then that's -- there's a footnote to
23 footnote number eight; right?

24 A Yes.

25 Q Okay. And then if we look at footnote

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1 number eight, it says the number of requests that were
2 denied, terminated, or withdrawn during the reporting
3 period; right?

4 A Correct.

5 Q Okay. So let's talk about each of those, in
6 particular. When you say -- or rather when the
7 footnote says requests that were denied, that would
8 include requests that did not meet one or more of the
9 stated criteria in the 2012 DACA memo; is that
10 correct?

11 A Or that were denied in the exercise of
12 discretion.

13 Q I understand. And I just want to make sure
14 we cover the entire universe here, okay?

15 A Okay. I'm sorry. But, yes, it would
16 include those.

17 Q So to -- and let's -- let's walk through it
18 one by one. To put a fine point on it, in USCIS's
19 reporting of these statistics about the DACA denials,
20 the number of applications that are denied includes
21 applications that did not meet one or more of the
22 stated criteria in the DACA memo; correct?

23 A Correct.

24 Q It also included or includes, potentially,
25 applications that met all of those criteria and then

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1 were denied anyway?

2 A Correct.

3 Q It also includes applications that were
4 terminated?

5 A Correct.

6 Q And what does it mean for an application to
7 be terminated?

8 A Sometimes a DACA request is granted, but
9 either the person subsequently does something that
10 would have been a disqualification or evidence comes
11 to light showing that a person had previously
12 committed what should have been a disqualifying act
13 and so the grant of DACA is terminated. In effect,
14 it's a denial after the fact.

15 Q Okay. Those terminations would occur
16 because the applicant did something that then
17 disqualified him or her from DACA eligibility?

18 A Either that or the person had already done
19 something, but the evidence of it did not come to
20 light until after DACA had been granted.

21 Q Understood. And then the number of denials
22 also includes applications that were withdrawn?

23 A Correct.

24 Q What does it mean for an application to be
25 withdrawn?

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1 A Sometimes a person might withdraw an
2 application when it becomes fairly clear that the
3 application is going to be denied. An application
4 might also be deemed withdrawn if a person leaves the
5 country or if the person -- or if anything happens to
6 cause the person to be ineligible for DACA, the
7 application might be withdrawn.

8 Q Okay. All right. Let's get back to your
9 declaration. We were on paragraph 39.

10 A Okay. If I could just finish the answer to
11 that last question?

12 Q Yes.

13 A Those would be -- you were asking me whether
14 this is information that would require a specialized
15 expertise to understand, and as your questions
16 indicate, it might not have been obvious to a
17 non-specialist what terminations include or what
18 withdrawals include. So interpretation of that
19 important chart is something that I think benefits
20 from the expertise that I have to offer.

21 Q Where did you get the expertise that you're
22 using to offer that opinion?

23 A It's a combination of my own general
24 knowledge from teaching and researching immigration
25 law and from my familiarity with the DACA process from

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1 my time at USCIS.

2 Q Okay. Go ahead.

3 A Should I go on?

4 Q Yes, please.

5 A Paragraph 42 is formed partly by just common
6 sense and logic. One would expect a person to be
7 pretty sure DACA is going to be denied and who is
8 undocumented not to apply for it. That's just
9 instinctive. But in addition to that, over the years
10 I've had many conversations with immigration
11 practitioners who have dealt with DACA applicants.
12 And it's clear from those consistent conversations
13 that attorneys and other representatives simply
14 counsel people not to apply if it's fairly clear they
15 will be denied. That's something that I don't think I
16 would have known but for both my expertise in the
17 field and my interactions with many attorneys over the
18 years.

19 Q Okay. Have you ever counseled anybody about
20 applying for DACA?

21 A I have not.

22 Q Okay.

23 A In paragraph 46, in the portion that appears
24 on page 20, one sentence a few lines down reads,
25 "Further, only the leadership can disseminate guidance

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1 throughout the agencies so that people on the ground
2 know what they are supposed to do, so that important
3 priorities will be transparent to the public and so
4 that there will be some reasonable degree of
5 consistency," unquote. It's based partly on my
6 experience at USCIS that I have come to understand the
7 importance of centralized guidance to adjudicators and
8 the fact that such guidance, in order to be
9 meaningful, must come from agency leadership.

10 Q And that's based on your two years at USCIS?

11 A Yes.

12 Q Okay. And that's not something that's
13 unique to USCIS?

14 A No, it's not. But even though it's not
15 unique to USCIS, I don't know that that's the case
16 with every agency. And so expertise and exposure
17 enable me to know that that is particular to USCIS.

18 In paragraph 48, I say that, "There's no
19 evidence to support any counter-instinctive assumption
20 that the USCIS adjudicators who decide DACA requests
21 are systematically disobeying the Secretary's multiple
22 clear instructions to exercise discretion on a
23 case-by-case basis," unquote. Impressed in that
24 statement is that I am personally unaware of any
25 evidence and I think that my exposure to USCIS is such

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1 that if there were any indication of that happening, I
2 would absolutely have been aware of it.

3 Q During the two years that you were at USCIS?

4 A Correct.

5 Q Have you reviewed any of the production from
6 the federal defendants in this case?

7 A No, I have not.

8 Q Okay.

9 A In the case of paragraph 49, some of the
10 statements, or at least one of the statements, that
11 the adjudicator has to struggle with determining how
12 probable and how severe a danger has to be in order
13 for a denial to be warranted, is based on my
14 experience at USCIS and knowing how often that subject
15 can come up. But I don't think I can comment on the
16 specifics of those discussions without breaching
17 privilege.

18 Q Understood.

19 A Okay.

20 Q But, again, those discussions would have
21 only occurred during the two years that you were at
22 USCIS?

23 A For those discussions, yes.

24 Q Ending in 2013?

25 A Yes.

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1 Q Okay.

2 A But I have to say, I can't think of any
3 reason that that would change after I left.

4 In paragraph 50 -- no, I'm sorry, my
5 mistake, paragraph 49. I discuss the fact that a
6 decision that is discretionary in character does not
7 become any less discretionary just because it goes to
8 one of the criteria, rather than to a determination
9 made after those criteria have been satisfied. I
10 think my expertise in immigration law enables me to
11 understand why those determinations are, in fact,
12 discretionary.

13 Q Your expertise in immigration law leads you
14 to that conclusion?

15 A Yes.

16 Q Which immigration laws, in particular?

17 A Immigration law, in general, because I --
18 there are many, many provisions of the Immigration and
19 Nationality Act that require adjudicators to exercise
20 discretion in one form or another. Sometimes it's a
21 very specific discretion, sometimes it's a more
22 residual discretion.

23 Q And those areas are spelled out either in a
24 statute or a regulation?

25 A The examples I'm thinking of are included in

1 the statute, but it is not always clear, unless one is
2 familiar with the case law, that those determinations
3 are, in fact, discretionary.

4 Q Understand. So it's either a statute or
5 regulation or case law?

6 A Yes. Case law --

7 Q Okay.

8 A -- and actual practice.

9 Q When you say "actual practice," what do you
10 mean by that?

11 A By actual practice, if, for example, an
12 adjudicator has to decide whether removal would result
13 in, quote, "extreme hardship," unquote, which is a
14 prerequisite to many forms of discretionary relief, it
15 might not be obvious to someone that in order to
16 determine extreme hardship, the person is doing a
17 weighing and balancing, rather than looking for
18 specific prerequisites. But knowing from -- knowing
19 from the fact that this is done in practice, that
20 these determinations require a weighing and a
21 balancing, is something that I think might not be
22 self-evident or non-specialized.

23 Q Okay. And what is the basis for your
24 knowledge about the practice that an individual
25 adjudicator goes through?

1 A Well, discussions of extreme hardship come
2 up all the time. Again, I can't reveal the specifics
3 of those discussions without breaching confidence.

4 Q And those discussions occurred during your
5 stint at USCIS?

6 A Yeah. The ones I was referring to now
7 occurred during my stint at USCIS. But, in addition,
8 there is always a lot of discussion among immigration
9 scholars, a very sophisticated debate about how
10 discretion -- how discretionary decisions are, in
11 fact, made in immigration law. There's been a great
12 deal written, a tremendous body of scholarly
13 commentary on that subject, and I think the
14 familiarity with that commentary enables me to
15 understand and hopefully to communicate how inherently
16 discretionary these judgments really are, even if the
17 statute doesn't use the specific word "discretion."

18 Q Where are those scholarly publications
19 published?

20 A In law review articles, in books.

21 Q Okay.

22 A In reports, yeah.

23 Q All right. When you say "immigration
24 scholars," are these immigration professors, for
25 example?

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1 A Typically, yes.

2 Q Okay.

3 A Sometimes practitioners, sometimes scholars.

4 Q When you say "practitioners," you mean
5 immigration lawyers?

6 A Yes. People who -- yes, immigration
7 lawyers. They might be in the private sector. They
8 might be in the public sector.

9 Q Okay.

10 A But they're not professors.

11 Q So it's either the immigration professors or
12 the immigration lawyers who are debating this idea
13 about how discretion is actually exercised?

14 A How it is exercised and how you can tell
15 whether a statutory delegation of responsibility is,
16 in fact, discretionary in the first place.

17 Q Thank you.

18 A I think that's the end of my list.

19 Q Okay. Let's talk about the conclusion
20 briefly in paragraph 51. You say, "It is my
21 firmly-held opinion that DACA is a case-by-case
22 exercise of prosecutorial discretion by which DHS
23 fulfills the Congressional directive to set and carry
24 out immigration enforcement priorities."

25 A Yes.

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1 the Secretary of Homeland Security has discretion to
2 grant employment authorization to aliens based on this
3 statute?

4 A Based both on this statute and on what the
5 old INS, back in the days of the Reagan
6 Administration, understood to be the general conferral
7 of authority to the agency to implement and administer
8 the immigration laws.

9 Q Okay. And --

10 A So it's a combination of both sources of
11 authority.

12 Q And what was the second source again?

13 A In 1981 or 1982, the Reagan Administration,
14 before the provision mentioned in paragraph 26 was
15 enacted, asserted the authority to grant employment
16 authorization to deferred action recipients. It did
17 so by issuing a formal notice and comment rule
18 specifically saying that deferred action recipients
19 could qualify. It elaborated on its authority to do
20 that in the federal registered notice accompanying the
21 regulation. And the authority it cited was the
22 general delegation of authority, from Congress to the
23 Executive Branch, to administer the immigration laws.

24 Q All right.

25 A After that, this provision was enacted,

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1 thereby making explicit what the Reagan Administration
2 had assumed was implicit.

3 Q Okay. And the thing that it made explicit
4 is that the executive has the authority to grant work
5 authorization to aliens, even if a particular statute
6 does not?

7 A That's correct. More specifically, the
8 Attorney General and now the Secretary of Homeland
9 Security.

10 Q Right. Are there any limits to the
11 Secretary of Homeland Security's ability to do that?

12 A There are no explicit limits in the statute
13 itself. Undecided by the courts is whether there
14 might be some implicit limit. No court that I'm aware
15 of had occasion to decide that question so I would
16 only be speculating.

17 Q Okay. And I just want to know, in your
18 opinion, as a retained expert for the intervenors in
19 this case, is there a limit to the Secretary of
20 Homeland Security's ability to grant work
21 authorization to aliens?

22 A My view is that there is an outside limit,
23 but that this policy, DACA, does not even remotely
24 approach that limit. The limit -- one limit that I
25 would suggest, and I don't mean to imply there are no

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1 details of that without exposing that type of
2 information, okay?

3 MR. ROBINS: Understood.

4 Q (By Mr. Disher) All right. So is there a
5 special unit that looks at applications which may pose
6 some national security threat?

7 THE WITNESS: May I answer that?

8 MR. ROBINS: I'm not objecting.

9 MS. PERALES: You follow his lead here.

10 THE WITNESS: Okay.

11 A If a case -- during the time I was there.
12 And, again, I can speak only to that period. During
13 the time I was there, if a national security issue
14 arose, it would go straight to the -- it would go
15 eventually to the director of the agency. Those cases
16 would be taken very seriously and the director would
17 want to know about them.

18 Q (By Mr. Disher) Understood. And then do you
19 know who would make the ultimate decision about that?

20 A There would be a conversation between the
21 director and whoever he wishes to consult.

22 Q Okay. While you were there, do you know how
23 often that happened?

24 A No, I don't know the numbers.

25 Q Was it more than 10 times?

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1 MR. ROBINS: Objection. Again, on law
2 enforcement privilege grounds.

3 MR. DISHER: Yeah, I just can't -- can I get
4 an estimate from him?

5 MR. ROBINS: No.

6 Q (By Mr. Disher) What about the public safety
7 decision, how many -- do you have any estimate about
8 how many applications were initially flagged because
9 they may pose some threat to public safety?

10 A I don't have an estimate as to that. I know
11 that, according to the published statistics, as of the
12 end of calendar year 2015, there were already
13 approximately 75,000 denials of DACA on the merits.
14 And my assumption would be the significant proportion
15 of those were on public safety grounds, but I can't
16 estimate what that proportion would be.

17 Q Okay. All right. In paragraph 50, you talk
18 about the affidavit from Donald Neufeld.

19 A Yes.

20 (Exhibit 7, Neufeld Affidavit, was
21 marked for identification.)

22 MR. DISHER: Mark that as Exhibit 7.

23 MS. PERALES: Seven?

24 MR. DISHER: Yes.

25 Q (By Mr. Disher) Now, you say, "The Neufeld

1 reason to think it might be denied, you might not
2 apply at all. And that's why I think the more
3 successful applicants are those who apply at the
4 beginning.

5 Q And I'm going to ask you to speculate, but
6 might there be other scenarios by which individual --
7 by which of these rates would increase over time the
8 denial rates?

9 A Possibly a different administration, but the
10 denial rates were continuing to increase even during
11 the first few -- the last few years of the Obama
12 Administration; so I don't think that would account
13 for an increase. I can't offhand think of any other
14 alternative explanation.

15 Q In preparing this declaration, have you done
16 anything to exclude other possibilities?

17 A I can't identify any other possibilities to
18 exclude.

19 MR. ROBINS: Okay. That's all I have. Pass
20 the witness.

21 EXAMINATION

22 QUESTIONS BY MS. PERALES:

23 Q I have a few questions for you, Mr.
24 Legomsky. With respect to differences between DAPA
25 and DACA that you discussed with Mr. Disher, is it

1 also fair to observe that the INA sets out provisions
2 under which parents of U.S. citizen children may
3 acquire an immigration status, but that the INA does
4 not have analogous provisions for undocumented people
5 brought to the U.S. as children?

6 MR. DISHER: Objection. Leading.

7 MS. PERALES: Yes.

8 Q (By Ms. Perales) Go ahead and answer.

9 A I think that is a fair argument because of
10 the fact that in the original Texas versus U.S. DAPA
11 case, if my recollection is correct, the Fifth Circuit
12 did include as one of the reasons for rejecting DAPA,
13 that the INA makes specific provision for certain
14 classes of family members, but not all the ones
15 included in DAPA. And as your question implies, the
16 same could not be said of DACA; so I would say, yes,
17 that is a fair argument to make.

18 Q You spoke a few moments ago about two
19 exhibits today that represented two different drafts
20 of your declaration. One is marked as Exhibit 5 and
21 the other one is marked Exhibit 8 from the deposition.
22 Can you just, in a brief sense, give us an
23 understanding of the differences between those two
24 drafts?

25 A Yeah. The main effect -- my main purpose in

1 redrafting was that when I discovered that I had time
2 for one more rigorous edit, I decided to take
3 advantage of that opportunity and so I wanted to
4 enhance the clarity and the specificity of the
5 statements I had made, as well as to make the document
6 a little bit cleaner by deleting information that I
7 thought might be redundant. And so that was what I
8 was trying to do in the second draft.

9 Q Okay. You spoke to Mr. Disher through a
10 series of questions and answers about the possible
11 legal limits of the authority of DHS to grant work
12 authorization to a very large number of undocumented
13 immigrants. And I was hoping that you would be able
14 to summarize the different limitations that you
15 identified in that colloquy in the answer to my
16 question.

17 A Certainly. And these are simply limitations
18 that I can think of. I don't want to exclude the
19 possibility that there are still other limitations,
20 but the ones that come most readily to mind are,
21 first, the resource limitations rationale takes you
22 only so far. There might be a certain point at which
23 the resources are available to remove a far greater
24 number than what the administration is removing, and
25 there could at least be an argument that by not fully

1 using the enforcement resources, the administration is
2 not acting consistently with the congressional intent
3 in passing the various Appropriations Act. That's
4 one.

5 Secondly, the particular priorities that the
6 administration uses in deciding whom to focus on and
7 whom not to focus on need to be -- need to have some
8 rational basis.

9 Third, they cannot violate Equal Protection;
10 so they cannot draw their priorities along lines that
11 would violate the Equal Protection Clause.

12 And fourth, the particular priorities, in my
13 view, cannot come into direct conflict with priorities
14 that Congress has explicitly ordered the
15 administration to take into account.

16 Again, there might be still others that are
17 not coming readily to mind.

18 Q Okay. And then for my last set of questions
19 to you, I'd like you to turn to your declaration dated
20 July 16, which is Legomsky Deposition Exhibit No. 5.

21 A Okay.

22 Q You identified some statements of fact in
23 the declaration with Mr. Disher and I'd like to go
24 over some additional fact statements with you that may
25 have been left out.

1 So with respect to page 3, paragraph 5, can
2 you identify for me the fact statements in that
3 paragraph?

4 A Well, certainly the first sentence is a
5 statement of fact. "DHS routinely establishes
6 priorities guiding its exercise of prosecutorial
7 discretion in the enforcement of the immigration
8 laws."

9 The second statement is also one of fact,
10 that deferred action is one of the instruments it uses
11 for this purpose. The third statement could be
12 characterized as one of fact, that deferred action is
13 one particular -- I'm sorry -- that DACA is one
14 particular deferred action initiative.

15 Q And with respect to the facts that you set
16 out in paragraph 3 of your declaration, can you
17 explain to us what you drew upon to state those facts
18 as being true?

19 MR. DISHER: I'm sorry. You mean paragraph
20 5.

21 Q (By Ms. Perales) I'm sorry. Page 3,
22 paragraph 5. I'm sorry. I apologize.

23 With respect to the fact statement on page
24 3, paragraph 5, can you explain what you drew upon to
25 make those factual statements?

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1 A Well, as to the first sentence, I
2 specifically drew on my general expertise in
3 immigration law and my experience from teaching, from
4 researching, from lots and lots of conferences and
5 conversations with other immigration scholars, with
6 lots of conversations over the years with immigration
7 practitioners and with other experts. I know that it
8 is very routine for DHS to establish priorities and
9 also for meeting the various documents in which they
10 have done precisely that.

11 Q And with respect to paragraph 5, did you
12 also draw on your experience as USCI -- working with
13 the Federal Government with DHS?

14 A Yes, I should have added that as well. That
15 certainly informs my knowledge as to the first
16 sentence and with respect to the second and third
17 sentences in that paragraph as well.

18 Q And then with respect to paragraph 6, in the
19 first sentence, "DACA is a decision by the agency to
20 defer action (immigration enforcement proceedings)
21 against an individual." Can you describe for me what
22 you drew upon to make that fact statement?

23 A Again, my general expertise derived from the
24 sources that I described a moment ago.

25 Q Okay. With respect to paragraph 7, which

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1 begins at the bottom of page 3, can you identify fact
2 statements in that paragraph?

3 A Yes. Yes. The entire paragraph is a
4 statement of fact. It describes what DHS has to do
5 when it makes decision not to bring enforcement
6 proceedings.

7 Q And specifically the listing of the factors
8 that DHS balances, can you describe for me what you
9 drew upon to make that fact statement?

10 A The same as before. My general expertise
11 from many decades of experience, plus my service time
12 at USCIS.

13 Q With respect to page 4, paragraph 9, can you
14 identify any fact statements in that paragraph?

15 A Certainly the first sentence is a statement
16 of fact. The second statement as well. And the third
17 statement as well. I'm sorry. The third sentence as
18 well.

19 Q And what did you draw upon to make those
20 fact statements?

21 A The same. My general expertise, plus my
22 time at USCIS.

23 Q Okay. With respect to paragraph 11, which
24 begins at the bottom of page 4, can you identify your
25 fact statements there?

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1 A All of the statements in paragraph 11 I
2 would describe as statements of fact.

3 Q And what did you draw upon to make those
4 fact statements in paragraph 11?

5 A The same. My general expertise in
6 immigration law and my time at USCIS.

7 Q At the bottom of page 5 where paragraph 15
8 begins -- I think you covered this one with Mr. Disher
9 so I'll move on.

10 A Yes.

11 Q With respect to paragraph 16 and the
12 statements in paragraph 16, on what did you base your
13 statement that in some instances, the beneficiaries
14 tended to be those with a bridge to some form of legal
15 status?

16 A Partly on the basis of what I've described
17 before, my general expertise. But in addition to
18 that, by examining summaries of the occasions on which
19 prior presidents have granted relief to large
20 number -- large categories of undocumented immigrants.

21 Q And upon what do you base your statement in
22 the following sentence, quote, "DACA too serves as
23 such a bridge because many current DACA recipients are
24 eligible to adjust as they grow older and marry,"
25 unquote?

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1 A I base that on -- again, on my general
2 knowledge of immigration law, but also on the specific
3 terms of DACA. I'll leave it at that.

4 Q Because of your background in immigration
5 law and experience at USCIS, are you familiar with the
6 methods by which an individual may be able to gain
7 legal permanent resident status?

8 A Yes, I am.

9 Q And are those provisions in the INA
10 standalone or must they be interpreted in the context
11 of other provisions?

12 A They absolutely have to be interpreted in
13 the context of many other provisions. In fact, I
14 should add that that last sentence applies to many of
15 the factual determinations that I've identified
16 earlier. Expertise is critical in these cases, not
17 only for the purpose of ferreting out individual
18 pieces of information as I've described in the
19 declaration, but perhaps even more importantly,
20 piecing it all together.

21 The Immigration and Nationality Act, as
22 specialists know, contain many, many provisions that a
23 person would not ordinarily discover by looking only
24 at the part of the INA in which one provision appears.
25 It's very common to read a provision of the INA and

1 not know that 200 pages later, there's another
2 provision that qualifies it. So being able to
3 understand how all these pieces fit together with each
4 other and how they fit together with various factual
5 statements that I've been identifying requires a good
6 deal of experience and specialized expertise.

7 Q And do you have that experience and
8 expertise?

9 A I do.

10 Q Moving forward to page 9, paragraph 22 at
11 the bottom of the page, can you tell me what you base
12 the fact statements in paragraph 22 upon when you made
13 them?

14 A On general expertise and on examination of
15 the specific provisions of the statute and provisions
16 of the regulations that are cited in that paragraph.

17 Q On page 10, paragraph 25, upon what did you
18 base your fact statements in paragraph 25?

19 A The first statement is based on general
20 expertise and, in particular, on being able to see
21 patterns of grants of preferred action or its function
22 of equivalence over the years. The same is true of
23 the second sentence. And the third sentence is based
24 both on the information that I've just described and
25 on examination of the particular statutory provisions

1 and provisions of the regulations on which those
2 benefits are specifically based.

3 Q Are favorable exercise of discretion
4 sometimes also embodied in memoranda or procedure
5 documents at DHS?

6 A Yes, they are.

7 Q And would one require a familiarity with
8 those memoranda and procedure documents in order to be
9 able to present the full context of deferred action in
10 similar exercises of discretion?

11 A I would say, yes, that would be
12 indispensable.

13 Q And do you have that familiarity?

14 A Yes, I do.

15 Q On page 14, paragraph 33, the very beginning
16 of the paragraph begins with the words, quote,
17 "Understanding the effects of advance parole on DACA
18 recipients," unquote. Do you see that there?

19 A Yes.

20 Q Do you understand the effects of advance
21 parole on DACA recipients?

22 A I do.

23 Q And upon what do you draw when you convey
24 your understanding of the effects of advance parole on
25 DACA recipients?

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1 A My general knowledge, plus my understanding
2 of how several different provisions of the INA work
3 together and on the basis of the experience I accrued
4 at USCIS.

5 Q Does understanding the effects of advance
6 parole on DACA recipients require an understanding of
7 the routes by which an individual is able to adjust
8 status under the INA?

9 A Yes.

10 Q Does it also require an understanding of
11 inadmissibility?

12 A Yes, absolutely.

13 Q Does it require an understanding of the
14 three and ten-year bars?

15 A Yes.

16 Q Does it require an understanding of other
17 barriers to adjustment of status that may be located
18 elsewhere in the INA?

19 A Yes.

20 Q With respect to paragraph -- page 15,
21 paragraph 34, when you talk about this concept of
22 jumping the line, upon what do you base that -- those
23 statements in paragraph 34?

24 A During the time that I was at USCIS, I know
25 that advance parole -- I'm sorry -- I know that

1 adjustment of status applications by people who had
2 received DACA and who had later received advance
3 parole were handled in the same way and all other
4 people in the same immigration category and in the
5 same order. So, for example, if you were applying for
6 adjustment of status based on being an immediate
7 relative of a U.S. citizen, there are no statutory
8 numerical limits and, therefore, the only waiting time
9 is processing time. There was no provision for
10 putting the DACA recipients ahead of the line of
11 people who were otherwise similarly situated.

12 Q And does your familiarity with this topic of
13 "the line," quote, unquote, include familiarity with
14 the availability of Visas, permanent resident Visas,
15 for different categories of individuals seeking to
16 adjust status?

17 A Yes, very much so.

18 Q And what is that based on? What is your
19 familiarity based on there?

20 A General knowledge of the Immigration and
21 Nationality Act and particularly how these numerous,
22 extremely complex statutory provisions work together.

23 MS. PERALES: I pass the witness.
24
25

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1 EXAMINATION

2 QUESTIONS BY MR. DISHER:

3 Q Mr. Legomsky, a few follow-up questions.

4 First, you mentioned piecing it all
5 together; right?

6 A Yeah.

7 Q You don't dispute that Judge Hanen himself
8 can piece it all together without your help, do you?

9 A I think that to reach a reliable decision,
10 anyone who is not an immigration specialist would need
11 the guidance of someone who understands the intricate
12 network of statutory and regulatory provisions and
13 case law that these decisions require. I spend an
14 entire semester immersed in teaching the students the
15 complexities of immigration law. And I would be very
16 wary of anyone who is not a specialist making these
17 decisions without input from a specialist.

18 Q That specialist could be a lawyer for one of
19 the parties in the case?

20 A It could be if the lawyers are specialists
21 in immigration law.

22 Q Okay.

23 A Otherwise, I think it would be unreliable.

24 Q Going back to the idea of the outer limit of
25 the executive's ability to grant work authorization,

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1 REPORTER CERTIFICATE

2 I, REBECCA L. TUGGLE, a Registered
3 Professional Reporter, Certified Court Reporter, and
4 Certified Shorthand Reporter within and for the State
5 of Missouri, do hereby certify that there came before
6 me on August 1, 2018, at Alaris Litigation Services,
7 711 N. 11th Street, St. Louis, Missouri 63101

8 STEPHEN LEGOMSKY

9 who was by me first duly sworn; that the witness
10 was carefully examined; that said examination was
11 reported by myself, translated and proofread using
12 computer-aided transcription; and the above transcript
13 of proceedings is a true and accurate transcript of my
14 notes as taken at the time of the examination of this
15 witness.

16 I further certify that I am neither attorney
17 nor counsel for nor related nor employed by any of the
18 parties to the action in which this examination is
19 taken; further, that I am not a relative or employee of
20 any attorney or counsel employed by the parties hereto
21 or financially interested in this action.

22 Dated this 2nd day of August, 2018.

23
24
25
Becca Tuggle

Rebecca L. Tuggle, RPR, CCR, CSR